In the

District Court of the United States

For the Middle District of Tennessee,
Nashville Division.

THE TEXAS COMPANY,

A Corporation Organized and Existing under the Laws of the State of Texas,

vs.

FRANK S. HALL, Commissioner of Finance and Taxation of the State of Tennessee,

L. D. SMITH, Attorney-General of the State of Tennessee,

R. M. ATKINSON, District Attorney-General of the State of Tennessee for the Tenth Judicial Circuit, Embracing Davidson County,

All Being Residents and Citizens of the State of Tennessee.

No. 305.

TRANSCRIPT OF RECORD.
COURT CAPTION, MARCH TERM, 1927.

Being the second Monday of March, 1927. Be it remembered that at a District Court of the United States, begun and held for the Nashville Division of the Middle District of Tennessee at the Federal Court Room in the City of Nashville, within said district, and the Sixth Circuit on the second Monday, it being the 14th day of March, 1927.

Court met pursuant to adjournment, present and presiding the Honorable Charles H. Moorman, Judge of the United States Circuit Court of Appeals for the Sixth Judicial Cir-

cuit, present and presiding the Honorable Xen Hicks, United States District Judge for the Eastern and Middle Districts of Tennessee, and present and presiding the Honorable John J. Gore, United States District Judge for the Middle District of Tennessee, when the following proceedings were had, to-wit:

ORIGINAL BILL.

(Filed April 9, 1927.)

Plaintiff, The Texas Company, a corporation organized under the laws of the State of Texas, complains of the defendants, Frank S. Hall, Commissioner of Finance and Taxation of the State of Tennessee; L. D. Smith, Attorney-General of the State of Tennessee, and R. M. Atkinson, District Attorney-General of the State of Tennessee for the Tenth Circuit, embracing Davidson County, and respectfully shows to the Court:

I.

That plaintiff is, and has been for a number of years, a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business at Houston, Texas; that for several years it has been qualified under the laws of the State of Tennessee to do business in Tennessee. Plaintiff has fully complied with the statutes and provisions of the State of Tennessee in reference to foreign corporations doing business in this State.

The plaintiff company was organized in the year 1902, for the purpose, primarily, of taking advantage of what its organizers conceived to be an opportunity for the development of the oil business by an independent company, uncontrolled by any alliance with any other company, at a time when the production of oil was beginning to be unusually large in the State of Texas and surrounding States.

In the process of its development, it has been, and is now engaged, in the purchase and storage of oil for future refinement and sale. It has also established refineries, and from time to time has engaged in the purchase of crude oil, and in the refining, transportation, and sale of oil and gasoline, and petroleum products throughout the country. Plaintiff has acquired and now owns wells in seven States of the Union; has constructed and is now operating a vast system of pipe lines from its own wells, and other wells, to its refineries. Plaintiff has established, and is now maintaining and operating six refineries, three of them within the State of Texas, one in the State of Oklahoma, one in the State of Wyoming, and one in the State of Illinois.

Plaintiff has invested in the development of its business many millions of dollars, and is now actively engaged in the sale of gasoline in forty-two states of the Union, and is exporting gasoline to practically every foreign country where there is an open market.

II.

For several years plaintiff has been engaged in the business of selling gasoline in the State of Tennessee. Sometimes it is engaged in the sale of gasoline and oil in interstate commerce, the sale of gasoline and oil in tank car lots, but at the present time it is engaged in the sale of gasoline in tank wagons from its established stations and depositories throughout the State of Tennessee to retail dealers.

At a number of points within the State of Tennessee, including Nashville, Memphis, Chattanooga, Knoxville, Shelbyville, Johnson City, and Greeneville, Tennessee, plaintiff either actually owns or leases, or controls by contract, a storage plant consisting of storage tanks, warehouses, etc. These stations are called wholesale distributing stations, but they are controlled and operated by plaintiff through its regularly engaged agents. When oil or gasoline is shipped from the refinery to any one of these separate stations it is shipped as the property of the plaintiff, and is billed that way, and then the gasoline is unloaded from the cars and stored in the tanks or warehouses hereinbefore mentioned.

The sale of gasoline is conducted in the following manner:

It engages its own agents at each one of these points. The agent is compensated for his services in the sale and delivery of gasoline by salary or commissions, as the case may be. These agents are now engaged in selling the gasoline, and have been so engaged for a number of months, to purchasers operating service stations.

Plaintiff has built up a large business in the State of Tennessee, mainly confined to the method of sale and dis-

tribution hereinbefore set out. Through the agents of this plaintiff in control of the various depots or stations, a large number of tank wagons are operated over diverse and various routes throughout the communities in which these stations are the centers, and plaintiff in this way is selling thousands of gallons of gasoline daily to filling stations throughout the State of Tennessee.

During the year 1926, plaintiff's business grew and increased in volume and in revenue very largely. Fo. example, in January, 1926, the total gallons of gasoline sold in the month were 596,162, while in July of that same year it reached the high point of 1,011,752, and for four months of that year, including the month of July, its total sales per month averaged more than 950,000 gallons; and during the entire year of 1926, plaintiff sold in the State of Tennessee, 9,759,742 gallons of gasoline.

Plaintiff avers that during the year 1927, its business has continued to show an increase over the corresponding months of the previous year. For the month of January, 1927, plaintiff's total sales aggregated 736,365 gallons, as against 596,162 gallons in January, 1926, or an increase of approximately 140,000 gallons. For the month of February, 1927, the sales aggregated 660,130 gallons, as against 563,-740 for the month of February, 1926, or an increase of approximately 100,000 gallons for that month, while in the month of March, 1927, the total sales by the plaintiff in Tennessee were 924,988 gallons, as against 662,141 gallons sold in March, 1926, or an increase of approximately 260,000 gallons over the sale in the month of March, 1926.

Plaintiff avers that if the month of April shows the same ratio of increase as the months of January and February and March, its business for the month of April would approximate the sale of a million gallons of gasoline in that month.

Plaintiff further avers, that during the year 1926, its gross revenue from the sale of gasoline aggregated over two millions of dollars, and its average for the spring and summer months was nearly $200,000 per month; and on the ratio of the increase of the business of the year 1927 over the year 1926, the gross revenue for any one month should aggregate more than $200,000.

Plaintiff avers that any cessation or interference with its business, either pending the determination of the price and the issuance of premiums above set forth, or if permits should be issued and contested by this plaintiff, plaintiff would suffer great and irreparable financial loss.

III.

Plaintiff respectfully states to the Court that the General Assembly of the State of Tennessee has enacted into a law Senate Bill No. 282, and it has received the approval of the Governor, which approval was given on the 8th day of April, 1927. Said bill is entitled "An Act to regulate the gasoline industry; to regulate the fixing and charging of prices of gasoline, and prescribing a method for determining at what prices gasoline dealers may sell gasoline; to prohibit rebate and discrimination; to create and establish a division of the Department of Finance and Taxation to be known as the Division of Motors and Motor Fuels, fixing the duties of the Commissioner of Finance and Taxation and of the Superintendent of such Division with respect to the regulation of sale prices of gasoline, to provide for the issuance of permits to gasoline dealers under the rules and regulations prescribed by the Division of Motors and Motor Fuels; to provide penalties for the violation of this Act; to levy and collect an additional tax on gasoline dealers; and to authorize a judicial review of the orders of the Division of Motors and Motor Fuels."

A copy of said Act is filed as exhibit to this bill and made a part hereof, but need not be copied.

By the terms of the Act itself, it takes effect from and after its passage. Plaintiff respectfully states and shows to the Court certain of the particular provisions of said Act, which vitally affect this plaintiff in the operation of its business.

Under Section 1 of the Act, the Division of Motors and Motor Fuels is created as a part of the Department of Finance and Taxation.

Under Section 2, the Act provides that this Division of Motors and Motor Fuels shall make investigation and collect and record data concerning the manufacture and sale of gasoline, freight rates, differentials in prices to wholesalers and retailers, the cost and expense of production and sale, and various other matters as fully set forth in Section 2 of the Act, all of which data and information shall be available for use by the Commissioner of Finance and Taxation in the regulation of prices at which gasoline may be sold in the State of Tennessee, and permits shall be issued for the sale of gasoline only subject to the approval of the Commissioner of Finance and Taxation, and only at the price fixed and determined by the Commissioner of Finance and Taxation and the Division hereinbefore mentioned.

This section authorizes and embraces the fixing of the prices of gasoline not only to the consumer, but the price at which it shall be sold wholesale or retail—that is to say, it

provides for what may be regarded by the Commissioner of Finance and Taxation as a reasonable differential.

Plaintiff states to the Court that the primary purpose of the creation of this commission, as gathered from the face of the Act itself, is to compel this plaintiff, and all others engaged in the sale of gasoline in the State of Tennessee, to fix such differential between the wholesale and retail prices of gasoline as to protect the business interests of the few persons who are engaged as wholesalers or jobbers, regardless of the effect it may have upon the public generally.

No permit will be issued except to sell in accordance with the terms and conditions, and at the price established by the Commissioner of Finance and Taxation and the Division referred to in the Act under his direction and control.

Under Section 3 of the Act, it is provided that it shall be unlawful for any person, firm, or corporation to engage in the sale of gasoline in Tennessee, wholesale or retail, without his having obtained a permit to do such business in accordance with the provisions of Section 2 of said Act.

It is also provided in said Act, that in order to obtain a permit, plaintiff is required, if it desires to engage in the sale of gasoline in this State, either at wholesale or retail, to set out in its application, as provided in Section 4 of the Act, elaborate details, including, among other things, the statement as to whether it desires to engage in the wholesale business or the retail business, the number and location of the different places in which it intends to operate, the names and addresses of the members of the firm, the style of the firm, and the place or places at which it is intended to do business; if a foreign corporation, the State of its incorporation, its principal place of business, etc., and the name or address of its principal agent or agents in the State of Tennessee; the price or prices at which said dealer is at the time of its application selling gasoline at the different locations where the same is sold; the cost price of such gasoline to the dealer, including the refinery cost, transportation cost, taxes and inspection fees, the cost of distribution, and such other costs and expenses as may enter into the price at which it is proposed to sell such gasoline; the price or prices at which he proposes to sell gasoline as a wholesaler and as a retailer.

It is further provided in Section 5 of said Act, that the Superintendent of the Division of Motors and Motor Fuels must take into consideration all this information, and recommend to the Commissioner of Finance and Taxation the terms and conditions upon which the permit shall be issued, and in fixing the price at which gasoline shall be sold at wholesale and retail. The final power of fixing such terms

and conditions and price is vested in the Commissioner of Finance and Taxation, after a hearing when demanded, as provided in Section 5 of said Act.

It is further provided in this section, that after the Commissioner shall have made his order fixing the price for the sale of gasoline, any applicant aggrieved by the action of the Commissioner, may have the action reviewed in any Chancery Court or Circuit Court in Davidson County, Tennessee, and on such review, the Court may "in its discretion, either supersede or modify said order in such manner and upon such conditions and terms as may appear to be proper."

It is further provided, in Section 6 of the Act, that it shall be unlawful for any person, firm or corporation engaged in selling gasoline at either wholesale or retail, to change his price or prices without applying for and obtaining the consent of the Superintendent of the Division of Motors and Motor Fuels, approved by the Commissioner of Finance and Taxation.

In Section 8 of the Act, it is provided that it shall be unlawful to grant any rebate to any consumer or purchaser of said gasoline, or to sell at any price different from the price filed with the Commissioner of Finance and Taxation and approved by him; or to discriminate in favor of any customer or purchaser in any locality to any extent beyond the difference in freight rates; and it is also provided that it shall be unlawful for dealers to fail to maintain differentials as hereinbefore set forth.

It is provided in Section 9 of the Act, that the Attorney General of the State shall be the law officer who shall represent the State in all proceedings before the Division or Department, and in all judicial proceedings growing out of the orders of said Department and Division.

It appears from the Act itself that the State of Tennessee, in the passage of this Act, is not only undertaking to regulate the price of gasoline to the consumers of the State; not only undertaking to unlawfully exercise the power to control the producers and dealers in gasoline in the disposition of their products except in conformity with the rules and regulations established in accordance with the provisions of this Act, but it has gone further than the effort on the part of any State in regard to the control of private business. It has undertaken, by the provisions for the establishment of differentials in the price of gasoline, which are binding upon all dealers, to make a differential between tank car prices, the wholesale or tank wagon price, and the filling station price, the effect of which is to protect the middleman, and to enable him to make a profit at the ex-

pense of the consumer, notwithstanding the fact that the producers and dealers and vendors of gasoline might be willing to sell to the consumer at a price much less than the price fixed with the provisions made for differentials.

It compels, for instance, this plaintiff, whose business is largely confined to tank wagon sales, to sell to its customers at a fixed and definite price in relation to the tank car prices that may be authorized, although this plaintiff may desire, and frequently would desire, to sell at a lower price, all of which places burdens upon the consumer of gasoline within the State of Tennessee for the exclusive benefit of a particular class—that is, the wholesaler, jobber or middleman.

The Act further destroys the right of contract, which is a property right under the law, and vested in the plaintiff, in regard to the sale and disposition of its products, and particularly the sale and disposition of its principal product —gasoline.

It imposes upon the plaintiff obligations in regard to the management and control and sale of its properties, that are not imposed generally upon all products and commodities of interest to the public at large.

IV.

Plaintiff respectfully states to the Court, that this Act is void and of no effect in that it violates certain rights of the plaintiff vested in it by the Constitution of the State of Tennessee and by the Constitution of the United States.

The Act violates Section 20 of Article 1, of the Constitution of Tennessee, providing that no retrospective law, or law impairing the obligation of contracts, shall be made; and Section 2 of Article 11, providing that nothing in the Constitution shall impair the validity of any debts or contracts, or affect any person or property, or any suits, actions, rights of action, or other proceedings in the Courts of Justice.

Under this Act, any contract that may have been made by the plaintiff in regard to the sale of gasoline before the passage of this Act, at a fixed price, or any contract made by any other dealer in gasoline in the State of Tennessee for the sale of gasoline at a fixed price is impaired, in that unless such price should be approved by the Commissioner of Finance and Taxation as hereinbefore set out, a sale at the contract price would be a penal offense, and would subject this plaintiff and all others engaged in such business in such situations to such penalties and punishment.

Said Act violates Section 8 of Article 1 of the Constitution of Tennessee, which provides that no man shall be disseized

of his freehold, liberties, or privileges or in any manner destroyed or deprived of his life, liberty, or property, except by the judgment of his peers or the law of the land, in that it deprives this plaintiff of the right to the disposition of his property upon such terms as it might see fit to dispose of it. It deprives this plaintiff of the right of contract, and further, it is class legislation, in that it singles out the gasoline business not only in regard to the fixing of prices for the sale of gasoline, but in providing for differentials in the prices as between sales to retailers and sales to wholesalers, thus protecting the middleman engaged in the sale of gasoline, while all other middlemen engaged in the sale of other commodities are left without protection. It is respectfully shown to the Court that the Courts of the State have interpreted this section of the Constitution of Tennessee as to prohibit unreasonable, arbitrary classifications, and the imposition of burdens and restrictions upon one class of business that are not imposed upon all classes of business, where there is no sound or reasonable distinction between them.

And for the same reason, it violates Section 8, Article 11 of the Constitution of Tennessee, which provides that the legislature shall have the power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land, nor to pass any law granting to any individual or individuals rights, privileges, immunities or exemptions other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law.

Plaintiff further avers that the Act violates Sections 1 and 2 of Article 2 of the Constitution of Tennessee, which provides that the powers of Government shall be divided into three distinct departments—the legislative, executive and judicial—and that no person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the other, except in the cases therein directed or permitted, in that as heretofore set forth, the Act provides that on appeal from the action of the Commission, under the terms of this Act, the action of the Commission may be reviewed in any Chancery or Circuit Court of Davidson County, Tennessee, and that in such procedure, the Court where the appellate proceeding is pending may "in its discretion, either supersede or modify said order in such manner and upon such conditions and terms as may appear to be proper."

By this provision in the Act, there is vested in the Court, or in the Judicial Department of the State, the right to exercise the legislative power of the making of rates.

V.

Plaintiff avers that the Act violates the rights of this plaintiff, and all others engaged in similar business, granted to it and to them by certain provisions of the Constitution of the United States. It violates that provision of the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

It violates this provision of the Fourteenth Amendment to the Constitution of the United States in that it impairs, and practically destroys the plaintiff's right of contract in reference to its own property, without any reasonable ground or basis of such action. It takes plaintiff's property without due process of law, and denies it the equal protection of the law, in that it applies certain limitations and restrictions to this plaintiff, that are not placed generally upon the business of other persons and corporations engaged in selling commodities in the State of Tennessee; and further, because the sale of gasoline is not impressed with any public interest such as would justify legislative control as to prices; and, finally, because there is no justification for a law which limits and restricts plaintiff and others engaged in the sale of gasoline in the State of Tennessee in such a way as to protect the middlemen, regardless of the interest of this plaintiff and others engaged in the sale of gasoline, on the one side, and the public on the other.

It violates Section 10 of Article 1 of the Constitution of the United States, which provides that no State shall pass a law impairing the obligation of contracts, for the same reasons as are set out in that part of this bill which states that it violates Section 20, Article 1, and Section 2 of Article 11 of the Constitution of the State of Tennessee; and because it, also, in requiring a permit for the sale of gasoline in the State, whether intrastate or interstate, imposes a burden upon interstate commerce contrary to the provisions of Section 8, paragraph 3, of Article 1, of the Constitution of the United States, vesting in Congress the exclusive right to regulate commerce among the several States.

VI.

Plaintiff respectfully states to the Court that it has large property rights involved in the interpretation and application of this law; that the amount involved to this plaintiff exceeds three thousand dollars; that it has no adequate remedy at law, and failure to comply with the provisions of

this Act, which plaintiff avers is unconstitutional and void, would subject it to numerous suits, both civil and criminal, and a multiplicity of litigation would arise that would put this plaintiff to great embarrassment, expense, and delay, in the ascertainment of its rights.

Manifestly quite a period of time will elapse before any proper determination can be made, under the provisions of the law, of the facts upon which the issuance of a permit must be based, and all this time it will be unlawful for the plaintiff, or any one else, to sell gasoline. As a result of the statute, therefore, there must necessarily be a complete cessation of the sale of gasoline in Tennessee for a long period of time. This would not only be oppressive and embarrassing to the people of Tennessee, but exceedingly embarrassing and expensive to plaintiff, costing the plaintiff large sums of money, running into the hundreds of thousands of dollars. Its stations would be idle, and its business would be stopped.

In order to avoid this, it would be necessary for plaintiff to disregard this statute, and subject itself to indictment and prosecution for every sale that is made throughout the length and breadth of the State. Thousands of misdemeanor cases could be brought against it, and in addition, it would be likely to be interfered within its rights by the injunctive process issued by the State.

The Act provides no power, either in the Commissioner or Governor, to suspend a portion of the Act until the investigation provided for in the Act is made.

As will appear from what has already been shown, the effect of the Act in question, if its operation is not immediately restrained by order of this Court, will be to work irreparable injury upon plaintiff. Plaintiff is engaged in business throughout the State, with annual sales of gasoline amounting to millions of gallons, the money lost to it between the time of the taking effect of the Act and the time of the operation of the Act will amount to hundreds of thousands of dollars.

Any violation of the Act, as heretofore stated, will subject plaintiff to indictment for misdemeanor, and to penalties and forfeitures of the severest kind. The penalties and forfeitures incurred by disregarding this Act are so severe, that plaintiff could not afford to await the test of the constitutionality of the Act through the ordinary method, as by defending an indictment for misdemeanor, or an injunction proceeding brought by the State or by any other person.

Plaintiff is advised that it has the right to file this bill to enjoin the officers of the State of Tennessee named as

defendants hereto, and their agents, and attorneys from proceeding against plaintiff under this Act.

PREMISES CONSIDERED, plaintiff prays—

1. That proper process issue, requiring the parties named as defendants to answer this bill, but not under oath, their answers under oath being waived.

2. That defendants and each of them, and all other persons, be temporarily and permanently restrained and enjoined from proceeding or attempting to proceed to enforce this act against plaintiff in any respect, and from interfering with plaintiff in any respect, and from interfering with plaintiff in the conduct of its business on the ground that plantiff has not complied with the act aforesaid, and from instituting any suit or proceedings against the plaintiff for the enforcement of the penalties and/or forfeitures provided for in said act or for the enforcement of the penalties and/or forfeitures provided by any other law of Tennessee for violations of said act, and from interfering in any way with plaintiff's conduct of its business as heretofore conducted.

3. That on the final hearing, said Act be declared unconstitutional and void, and that said temporary injunction be made permanent, and that plaintiff have all such other, further and general relief as the premises or proof may warrant and equity require.

4. That because immediate and irreparable injury will be done to plaintiff unless the enforcement of said act is enjoined and restrained at once and pending the hearing of plaintiff's application for said preliminary injunction, plaintiff further prays that upon the filing of this bill, a temporary restraining order issue, enjoining and restraining the said defendants as hereinabove prayed until the hearing and determination of plaintiff's application for a preliminary injunction.

This is the first application for an injunction and restraining order in this case.

KEEBLE, SEAY, STOCKELL & KEEBLE,
Solicitors for Plaintiff.

STATE OF TENNESSEE,
COUNTY OF DAVIDSON.

I, Jno. B. Keeble, having been duly sworn, make oath and say, that I am now, and have been for more than a year past, attorney of The Texas Company for the State of Tennessee and that as such attorney I am familiar with the conduct of business of said company in Tennessee; that I have read the foregoing bill, and the statements therein

made are true to the best of my knowledge, information and belief.

JNO. B. KEEBLE.

Subscribed and sworn to before me, this 8th day of April, A.D., 1927.

KATIE E. GERRATY,
Notary Public.

Exhibit to Original Bill

SENATE BILL No. 282.

(By McKnight, Wiggs and Miller.)

AN ACT to regulate the gasoline industry; to regulate the fixing and charging of prices of gasoline and prescribing a method for determining at what prices gasoline dealers may sell gasoline; to prohibit rebate and discrimination; to create and establish a Division of the Department of Finance and Taxation to be known as the Division of Motors and Motor Fuels, fixing the duties of the Commissioner of Finance and Taxation and of the Superintendent of such Division with respect to the regulation of sale prices of gasoline; to provide for the issuance of permits to gasoline dealers under rules and regulations prescribed by the Division of Motors and Motor Fuels; to provide penalties for the violation of the Act; to levy and to collect an additional tax on gasoline dealers; and to authorize a judicial review of the orders of the Division of Motors and Motor Fuels.

SECTION 1. Whereas, gasoline is now in general use as a motor fuel, in both public and private transportation, and is necessary in carrying on the commerce of the people of this State; and,

Whereas, the business of selling and marketing gasoline has become demoralized because of the attempt on the part

of some dealers to monopolize the business and destroy competition, and because of the unfair and improper practices in the trade, it has become necessary for the State to control and regulate the business of selling and marketing gasoline in order to prevent the destruction of competition and to prevent extortionate prices and to preserve both public and private commerce and transportation,

It is therefore hereby declared that the sale and marketing of gasoline in this State is impressed with public use,

Therefore, Be it enacted by the General Assembly of the State of Tennessee, That there is hereby established a Division of the Department of Finance and Taxation to be known as the Division of Motors and Motor Fuels, which said Division shall be in charge of a Superintendent to be named and appointed as other Superintendents of Divisions of the Department of Finance and Taxation are provided by law.

SEC. 2. *Be it further enacted,* That it shall be the duty of the Commissioner of Finance and Taxation to require the Division of Motors and Motor Fuels, through the Superintendent and other employes of said Division, to make investigations and to collect and record data concerning the manufacture and sale of gasoline; the cost incident to the refining processes at the refineries to the dealers in Tennessee and elsewhere, freight rate, differentials in prices to the wholesale dealer and the retail dealer; the cost and expense incident to the sale of gasoline; the methods employed by manufacturers and dealers in the distribution of gasoline to consumers, and such other data and information as will or might be material in ascertaining and determining what prices would be fair and reasonable to be paid for gasoline by wholesale dealers, retail dealers and consumers. All such data and information shall be available for use to the Commissioner and the Division aforesaid in the regulation of prices at which gasoline may be sold in the State of Tennessee, and shall be available for the inspection and information of the public, and the said Commissioner is authorized, when deemed necessary, to make public by publication or otherwise the information secured hereunder. It shall be the duty of the Superintendent of the Division of Motors and Motor Fuels to issue permits to dealers, subject to the approval of the Commissioner of Finance and Taxation, authorizing the sale by wholesale or retail of gasoline in this State at prices fixed and determined as hereinafter provided, and to perform such other duties as may be prescribed by subsequent sections of this Act.

SEC. 3. *Be it further enacted,* That it shall be unlawful for any person, firm or corporation to engage in the sale

of gasoline in intrastate commerce in this State, either at wholesale or retail, without first having obtained a permit to do such business, signed by the Superintendent of the Division of Motors and Motor Fuels and approved by the Commissioner of Finance and Taxation, and no permit shall be issued to any firm, person, or corporation to engage in the sale of gasoline in intrastate commerce unless and until such dealer shall make application therefor in accordance with the regulations of this Act, and in compliance with all the requirements and provisions hereof.

SEC. 4. *Be it further enacted*, That every person, firm, or corporation, desiring to engage in the sale of gasoline in intrastate commerce in this State, either at wholesale or retail, shall make application to the Superintendent of the Division of Motors and Motor Fuels therefor, and shall be set out in said application the following information, to-wit:

(a) Whether he proposes to do a wholesale or retail business, or both; and if a wholesale business, the number and location of the different places at which he intends to operate; and if a retail business, the number and location of the different service stations and pumps he intends to operate.

(b) If the applicant is an individual, give his name and address; if a partnership, the names and addresses of the members of the firm, the style of the firm and the place or places at which it is intended to do business; if a domestic corporation the location of its principal office and the names and addresses of its principal officers; if a foreign corporation, the State of its incorporation, its principal places of business in the State where chartered, and its principal place of business in this State, as well as the names and addresses of its principal officers, and the name and address of its principal agent or agents in this State.

(c) The price or prices at which said dealer is at the time of the application selling gasoline at the different locations where he sells the same.

(d) The cost price of such gasoline to said dealer, including the refinery cost, transportation cost, taxes and inspection fees, the cost of distribution, and such other costs and expenses as may enter into the price at which it is proposed to sell such gasoline.

(e) The price or prices at which he proposes to sell gasoline as a wholesaler and as a retailer.

(f) Such other information as may be prescribed by the Superintendent.

SEC. 5. *Be it further enacted*, That it shall be the duty of the Superintendent of the Division of Motors and Motor Fuels to take into consideration all the information fur-

nished as provided by the previous section, and if the price or prices at which said applicant proposes to sell gasoline does not exceed a reasonable profit to the dealer, after figuring the cost to the dealer, freight and expenses in marketing, and making a proper differential between the wholesale and retail prices, and the same is in the interest of the public, to issue to said applicant a permit authorizing him to sell gasoline in the State of Tennessee; provided, however, such permit must first be approved by the Commissioner of Finance and Taxation.

If, however, the price at which any applicant proposes to sell gasoline in Tennessee shall be by such Superintendent of Motors and Motor Fuels deemed unfair and unreasonable in view of the information which by the previous sections is required to be taken into consideration, then it shall be his duty to fix and name a price or prices at which gasoline may be sold by the said applicant, and to notify said applicant thereof in writing, stating the reasons for his action in this respect. In the event the applicant is dissatisfied with the action of the Superintendent, it shall be his duty, before engaging in the sale of gasoline in this State, to notify the Commissioner of Finance and Taxation in writing, within ten days after receiving notice of the action of the Superintendent, of his dissatisfaction, and shall in said notice set forth specifically the objections which he has to the ruling of the Superintendent and the reasons upon which he relies for a review or correction of the action of the Superintendent, and shall demand of the Commissioner that he fix a time and place at which the Commissioner will hear proof, limited to the grounds and reasons assigned by the applicant for his dissatisfaction to the action of the Superintendent. Thereupon it shall be the duty of the Commissioner to fix a time and place and afford to the applicant an opportunity to be heard with respect to the grounds of his complaint by the introduction of proof, if desired. The time and place of such hearing will be named by the Commissioner, which shall not be more than five days from the date of the filing of the complaint with him, notice of such time and place to be given to the applicant. It shall likewise be the duty of the Commissioner to give to the Governor and to the Attorney-General of the State, and to all other applicants for permits to whom permits have not been issued at the time, notice of the complaint of any applicant, and the time and place at which such said complaint will be heard. Any other person interested in the price of gasoline, either as a dealer or consumer, may likewise be heard upon the complaint of any applicant under such rules and regulations as the Commissioner may prescribe,

provided that said Commissioner may give notice by publication in daily newspapers published in at least two of the four larger cities of the State. After such hearing the Commissioner shall decide, upon taking into consideration the facts and information hereinbefore referred to, and such other facts as may be relevant, whether or not a permit will be issued to the applicant to sell gasoline at the price or prices proposed, or, if not, at what price a permit will be issued, giving notice to the applicant thereof.

Any applicant aggrieved by the action of the Commissioner may file a petition for the purpose of having said action reviewed in any Chancery Court or Circuit Court of Davidson County, Tennessee, provided notice of his intention to file a petition for review has been served on the Commissioner five days in advance of filing. Upon receiving notice of the intention of an applicant to file a petition for review, as aforesaid, it shall then be the duty of the Commissioner to cause all of the proceedings had before him on the application to be reduced in writing, and verified by him as being correct, so that when such petition has been filed and notice thereof served upon him (and the petitioner shall cause such notice to be served), the Commissioner shall, within five days, then file with the Clerk of the Court where said suit is brought a transcript of all the proceedings had before him, and which is sought to be reviewed, and said transcript duly verified shall constitute all the record, and shall be the basis of the action of the Court of Review; provided, that the court may, in its discretion, upon good cause shown, allow either side to file additional proof. No order of the Commissioner shall be superseded by said Court before final hearing, unless after five days' notice to the Commissioner it shall appear to the Court at a regular hearing, or at Chambers upon proper motion, that irreparable injury will result to the petitioner on the continuance of said order, and that no irreparable injury will result from a dissolution or modification thereof; in such event the Court may, in its discretion, either supersede or modify said order in such manner and upon such conditions and terms as may appear to be proper.

SEC. 6. *Be it further enacted,* That it shall be unlawful for any person, firm or corporation, engaged in selling gasoline in Tennessee, at either wholesale or retail, to change his price or prices without applying for and obtaining the consent of the Superintendent of the Division of Motors and Motor Fuels, approved by the Commissioner of Finance and Taxation. Any dealer desiring to change his price shall file his application with the Commissioner at least five days before the proposed change in prices, and shall set

out in his said application the reasons for said change, and shall show:

(a) That conditions exist, or have arisen, justifying such changes, and what such conditions are, which show that the new price to be charged is not unfair to the public and not unfair to other dealers.

In determining whether such change shall be permitted the same procedure shall be had as hereinbefore prescribed with respect to the issuance of the original permit, and the same remedies shall apply to anyone aggrieved at the action of the Commissioner as is afforded to one aggrieved by the action of the Commissioner upon an original application, including the right of review to any Chancery or Circuit Court of Davidson County, Tennessee.

SEC. 7. *Be it further enacted,* That either the Attorney-General of the State, or any other person interested, whether as dealer or consumer, may file with the Superintendent of the Division of Motors and Motor Fuels objection to any price or prices being maintained by any dealer as herein defined, and may show in his petition setting up said objection that the price or prices are extortionate or unfair to the public, or to any other dealer, as above set out, and after due notice to such dealer, and after hearing proof in the manner and form hereinbefore prescribed for the procedure of the Commissioner of Finance and Taxation, and in such manner as will give both sides proper opportunity to be heard, the Commissioner shall, if the facts warrant such action, issue an order to the said dealer whose prices are complained of, restraining him from selling at the price complained of, or the Commissioner may make in said order any such conditions or limitations as under the facts will do justice to said dealer and protect the public and legitimate competition, the Commissioner at all times taking into consideration those facts and elements hereinbefore set forth as constituting a fair and reasonable price in the interest of the public. Any other person aggrieved at the action of the Commissioner in this respect shall be entitled to the same right of objection and review by the Courts, and under the same procedure as is hereinbefore provided in the case of original applications for permits.

SEC. 8. *Be it further enacted,* That it shall be unlawful for any person, firm or corporation, engaged in intrastate wholesale or retail gasoline business in Tennessee to grant any rebate to any customer or purchaser of said gasoline from any dealer, or to sell to any such purchaser or customer at a price different from that filed with the Commissioner of Finance and Taxation, or to grant any concession or gratuity, directly or indirectly, to any customer or pur-

chaser for the purpose of inducing said purchaser or customer of said dealer to purchase, use or handle the gasoline of said dealer; and it shall be unlawful for any person, firm or corporation engaged in intrastate wholesale or retail sale of gasoline in Tennessee to discriminate against or in favor of any customer or purchaser of said dealer by selling at a different price to said purchasers in different localities in Tennessee, or to different purchasers in the same locality, provided the dealer may take into consideration the difference in freight rates to different localities, and provided further, that dealers shall maintain proper differentials between wholesale and retail prices as such differentials may be fixed and determined by the Superintendent of the Division of Motors and Motor Fuels with the approval of the Commissioner of Finance and Taxation. And it shall also be unlawful for any person, firm or corporation to bring about an unreasonable or unfair increase in the refinery prices of gasoline to dealers in Tennessee, or who shall aid or conspire, combine or confederate with others in aiding to bring about such unreasonable and unfair increase in such refinery price.

No firm, person, or corporation who violates any of the provisions of this Section shall be entitled to a permit to engage in the wholesale or retail or intrastate sale of gasoline. The Governor, the Attorney-General of the State, or any person interested in the price of gasoline, whether dealer or consumer, may upon petition file with the Commissioner of Finance and Taxation complaint against any person, firm or corporation as being guilty of a violation of the provisions of this Section, and if such complaint be filed with the Commissioner, properly sworn to and verified, it shall be the duty of the Commissioner to give notice to the dealer whose conduct is complained of and afford a hearing upon notice to all persons concerned. If the dealer complained of is found to be guilty of the charges by the Commissioner, then it shall be his duty to refuse to issue or cancel his permit. Any investigation had by the Commissioner under the provisions of this Section shall be held and conducted in the same manner as hereinbefore provided for complaints at the action of the Commissioner upon original applications, and the same remedies shall be afforded to those aggrieved as are hereinbefore afforded to persons aggrieved by the action of the Commissioner with respect to original applications for permits.

SEC. 9. *Be it further enacted*, That the Attorney-General of the State, or some assistant Attorney-General designated by him for said duty, shall be the law officer of the Division of Motors and Motor Fuels and the Commissioner of Fi-

nance and Taxation and shall represent the public in all proceedings before the said Division or Department, and in all judicial proceedings growing out of the orders of said Department and Division.

SEC. 10. *Be it further enacted*, That before any person, firm or corporation shall obtain a permit to deal in gasoline, either at wholesale or retail, in this State, he shall pay a special permit tax, which shall accompany the application for permit, as follows:

(a) For each place so conducted for the wholesale marketing of gasoline, $10.00 per annum;

(b) For each retail service station or curb pump, $1.00 per annum.

This tax shall be in addition to all other license, inspection or ad valorem taxes otherwise provided by law, and shall be kept as a special maintenance fund to aid in defraying the expenses of the Motors and Motor Fuel Division of the Department of Finance and Taxation.

SEC. 11. *Be it further enacted*, That the term "gasoline," as used in this Act, means and includes:

(a) The volatile substance produced from petroleum, natural gas, oil shale or coal heretofore sold under the name of gasoline.

(b) Any volatile substance or product less than 112 Fahrenheit Flash Test when tested in a manner approved by the U. S. Bureau of Mines, derived wholly or in part from petroleum, natural gas, oil shale or coal.

(c) Benzol and/or any other volatile substance used wholly or in combination with gasoline as a liquid fuel.

SEC. 12. *Be it further enacted*, That if any section or provision of this Act shall be held to be invalid this shall not affect the validity of other sections or provisions hereof.

SEC. 13. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 5, 1927.

HENRY H. HORTON,
Speaker of the Senate.

SELDEN MAIDEN,
Speaker of the House of Representatives.

Approved: April 8, 1927.

AUSTIN PEAY, *Governor.*

AFFIDAVIT OF AMOS L. BEATY.

(Filed May 20, 1927)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

AMOS L. BEATY, being duly sworn, says:

That he is now, and has been since March 16, 1926, the Chairman of the Board of Directors of The Texas Company; that on April 19, 1927, the properties and business of The Texas Company, a corporation of Texas, incorporated in 1902, were transferred to The Texas Company, a corporation of Delaware; that from 1920 to 1926, he was President of The Texas Company, and for the past fourteen years has been a member of the Board of Directors of said Company, and also of its Executive Committee; that the business of the company and its general policies are controlled by its Board of Directors, and that subject to the control of the Board of Directors the Executive Committee and officers of the Company formulate and execute the policies which have been determined.

That affiant is familiar with the policies which have been formulated and states that no policy or line of conduct is carried on without his knowledge; that The Texas Company does not at this time have and never has had any contract, agreement, or understanding of any kind or character whatsoever with any other company, person firm or association engaged in the petroleum industry in any way fixing or controlling prices, or restricting production of petroleum products, or distributing territory for business purposes.

That the prices at which this complainant sells gasoline and its other products in the State of Tennessee, as elsewhere, is fixed by it on the basis of economic and competitive conditions and without contract, agreement, or understanding of any sort or character whatsoever with any other company, person, firm or association.

Affiant states that The Texas Company is engaged in each of the four principal subdivisions of the petroleum industry, to-wit: (1) producing; (2) transporting; (3) refining and manufacturing; and (4) marketing.

Affiant states that there is no company, firm, person or association or any combination thereof having a monopoly of the oil industry or any of its branches. That upon information and belief in the year 1926, within the United States, there were more than 4,000 companies, persons, firms, or associations engaged in the production of crude oil; more than 100 engaged in the transportation thereof; more than 500 engaged in refining and manufacturing petro-

leum products, and more than 3,000 in marketing such products.

Affiant states, upon information and belief that The Texas Company does not hold or control either in the State of Tennessee or in the United States as much as nine per cent of the business of the petroleum industry or any of its branches.

The operations of this complainant under each and all of the four branches of its business are covered by economic and competitive conditions, without any contract, agreement, or understanding of any kind whatsoever with any other company, person, firm, or association engaged in the industry fixing or controlling prices, or restricting production of petroleum products, or distributing territory for business purposes.

(Signed) AMOS L. BEATY.

Sworn to before me and subscribed in my presence this 28th day of April A.D. 1927.

WM. G. MCCONKY,
Notary Public.

(Seal)

AFFIDAVIT OF R. C. HOLMES.

(Filed May 20, 1927)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

R. C. HOLMES, being duly sworn, says:

That he is, and has been since March 16, 1926, the President of The Texas Company; that on April 19, 1927, the property and business of The Texas Company a corporation of Texas, incorporated in 1902, were transferred to The Texas Company, a corporation of Delaware; that affiant has been a director of said company since 1906, and a member of the executive committee since 1919; that the business of the company and its general policies are controlled by its Board of Directors, and that subject to the control of the Board of Directors, the Executive Committee and

officers of the company formulate and execute the policies which have been determined;

That affiant is familiar with the policies which have been formulated and states that no policy nor line of conduct is carried on without his knowledge; that The Texas Company does not at this time have, and never has had any contract, agreement or understanding of any kind or character whatsoever with any other company, person, firm, or association engaged in the petroleum industry in any way fixing or controlling prices or restricting production of petroleum products or distributing territory for business purposes;

That the price at which this complainant sells gasoline and its other products in the State of Tennessee, as elsewhere, is fixed by it on the basis of economic and competitive conditions and without contract, agreement or understanding of any sort or character whatsoever, with any other company, person, firm or association.

Affiant states that The Texas Company is engaged in each of the four principal subdivisions of the petroleum industry, to-wit: (1) producing; (2) transporting; (3) refining and manufacturing; and (4) marketing.

Affiant states that there is no company, person, firm, or association or any combination thereof, having a monopoly of the oil industry or any of its branches; and states, upon information and belief, that in the year 1926, within the United States there were more than four thousand companies, persons, firms, or associations engaged in the production of crude oil; more than one hundred engaged in the transportation thereof; more than five hundred engaged in refining and manufacturing petroleum products and more than three thousand engaged in marketing such products. That The Texas Company does not hold or control, either within the State of Tennessee or in the United States, as much as nine per cent of the business of the petroleum industry or any of the four branches thereof.

The operations of this complainant under each and all of the four branches of its business are governed by economic and competitive conditions and without any contract, agreement, or understanding, of any kind whatsoever with any other company, person, firm or association engaged in the industry of fixing or controlling prices or restricting production of petroleum products, or distributing territory for business purposes.

(Signed) R. C. HOLMES.

Sworn to before me and subscribed in my presence this 28th day of April, 1927.

(Seal) WM. G. MCCONKY, *Notary Public.*

AFFIDAVIT OF W. W. BRUCE.

(Filed May 20, 1927)

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

W. W. BRUCE, being duly sworn, says:

That he is now and has been since April 7, 1925, a Vice-President of The Texas Company in charge of sales; that since March 16, 1926, he has been a member of the Company's Board of Directors; that on April 19, 1927, the properties and business of The Texas Company, a corporation of Texas, incorporated in 1902, were transferred to The Texas Company, a corporation of Delaware. Affiant states that the business of The Texas Company and its general policies are controlled by its Board of Directors, and that subject to the control of the Board of Directors, the Executive Committee and the officers of the Company formulate and execute the policies which have been determined.

Affiant states that The Texas Company does not produce or refine petroleum products in the State of Tennessee, but is engaged in the distribution of its products therein. He states that he is familiar with the sales policies which have been formulated, and says that no sales policy or practice is carried on without his knowledge; that The Texas Company does not at this time have, and never has had any contract, agreement or understanding of any kind or character with any other company, person, firm, or association engaged in the petroleum industry in any way fixing or controlling prices, or restricting production of petroleum products or distributing territory for business purposes.

That the price at which this complainant sells gasoline and its other products in the State of Tennessee, as elsewhere, is fixed by it on the basis of economic and competitive conditions, and without contract, agreement or understanding of any sort or character whatsoever with any other company, person, firm, or association.

Affiant states that there is no company, firm, person, or association or any combination thereof having a monopoly of the oil industry or any of its four branches, to-wit: production, transportation, refining, and marketing.

Upon information and belief, affiant stated that The Texas Company does not hold or control as much as nine per cent of the business of the petroleum industry or any of the four branches thereof either in the State of Tennessee or in the United States.

W. W. BRUCE.

Sworn to and subscribed in my presence this 28th day of April, A.D. 1927.

(Seal) WM. G. MCCONKY, *Notary Public.*

RESTRAINING ORDER.

(Entered April 9, 1927—GORE, *Judge*)

This cause came on this day to be heard on the application of the plaintiff for a temporary restraining order enjoining and restraining the defendants as prayed in the original bill, and on the entire record herein and as argued by counsel.

And the Court, having considered the same, and being of opinion therefrom, that such restraining order should be granted, it is now accordingly ordered that the defendant and each of them, their agents, assistants, attorneys, and subordinates in office, and all persons, acting by, through or under them, be and they are hereby, restrained and enjoined from proceeding to enforce against the plaintiff the Act of Tennessee passed April 8th, 1927, known as Senate Bill 282, a copy of which is attached to the Original Bill as Exhibit "A," in any respect, and from interfering with the plaintiff in the conduct of its business on the ground or for the reason that plaintiff has not complied with said act; and from instituting any suit or proceeding against plaintiff for the enforcement of the penalties and/or forfeitures provided in said act, or for the enforcement of the penalties and/or forfeitures provided by any other law of Tennessee for violations of said act.

It is further ordered that this order shall remain in effect only until the plaintiff's application for an interlocutory injunction has been heard and determined, and that said application for an interlocutory injunction shall be heard at Nashville on Saturday, April 16, 1927, at 10 o'clock A.M.

It is further ordered that a copy of this order be served upon each of the defendants, and that five days notice of the hearing of said application for said interlocutory be given to each of the defendants and also to the Governor of Tennessee.

GORE, *Judge*.

MOTION TO DISMISS, AND ANSWER OF DEFENDANTS.

(Filed April 30, 1927)

The motion to dismiss the bill in the above entitled cause, and the Answer thereto of defendants, Frank S. Hall, Commissioner of Finances and Taxation of the State of Tennessee, L. D. Smith, Attorney General of the State of Tennessee, and R. M. Atkinson, District Attorney General of the State of Tennessee, for the Tenth Circuit, embracing Davidson County, to said bill filed against them in this court on the 9th day of April, 1927.

Come the defendants and move to dismiss plaintiff's bill upon the grounds following, to-wit:

(1) There is no equity upon the face of said bill.

(2) To the extent said bill is predicated upon any alleged impairment of plaintiff's claimed contract rights by the Act of the Tennessee Legislature, set forth in and made a part of said bill, plaintiff wholly fails to aver and set out any contract or agreement existing between it and any person, firm, or corporation which will be unlawfully affected or impaired by said Act within the meaning of the provisions of either the State or Federal Constitutions referred to and relied upon in said bill.

(3) The plaintiff, as alleged by it, is a foreign corporation, and is entitled to carry on its intra-state business within the State of Tennessee only by such permission or license as said State may deem, from time to time, proper to impose upon it, and said Act, duly passed by the General Assembly of the State of Tennessee, within its just powers, is a valid enactment prescribing the terms and conditions upon which plaintiff may continue to carry on and operate its intra-state business within said State, and if plaintiff does not desire to continue such intra-state business by complying with said Act, said plaintiff may withdraw or discontinue such business without incurring any of the penalties prescribed by said Act.

(4) Said Act of the State of Tennessee is a valid and constitutional enactment within the sovereign police powers of said State, and is not in contravention of, or repugnant to any provision of either the State or Federal Constitutions referred to and relied upon in plaintiff's bill.

(5) The facts averred in the bill, and other facts or conditions of general and common knowledge, of which the Court will take notice, show that gasoline usable and necessary, under existing conditions, for power, light, heating and other purposes, necessary to the comfort, welfare and prosperity of the people of Tennessee, has been devoted by

plaintiff and other like dealers to a public use, and is affected with a public interest, and is, therefore, subject to regulation by the State of Tennessee.

(6) That in so far as plaintiff seeks to enjoin the defendants, and particularly the defendants L. D. Smith, Attorney General of Tennessee, and R. M. Atkinson, District Attorney General of Tennessee, from enforcing the provisions of Section 8 of said Act, defendants say that the plaintiff is not entitled to any such injunction or restraining order because it is within the power of the State to prohibit concessions, rebates, gratuities and other practices, the necessary result of which is to destroy fair and reasonable competition and to bring about unjust discrimination between users and purchasers of gasoline.

(7) This Court cannot in the exercise of its equity jurisdiction restrain and enjoin the execution of the Act challenged in the plaintiff's bill, for the reasons that the officials named therein, charged with the enforcement of the Act, have taken no action with a view to determining the regulation or fixing of prices of gasoline that gasoline dealers may charge to the purchasing public, and until this shall have been done, and proved to be unreasonable in the sense of the law, there is no ground of equity jurisdiction under which this Court can grant the injunction prayed for; and, further, it is a necessary condition in law and equity, before invoking the jurisdiction of this court on its equity side, that the plaintiff shall have exhausted the procedure outlined in the Act itself for determining the prices at which gasoline may be sold by the dealer.

(8) This Court has no jurisdiction to grant the injunction prayed for in the bill to prevent the execution of this Act, for the reason that no case is made by the bill that shows that any violation of the property rights of the plaintiff, that may be alleged to result from the execution of this Act, cannot be fully compensated by an action at law. And plaintiff has no standing in this Court unless the facts stated, as a ground for relief by way of injunction, show some distinct head of equity jurisprudence under which the relief asked for by way of injunction can be granted, on the ground that if not granted there is no other adequate relief by an action at law.

(9) Section 1 of the Act in question declares a fact of common knowledge in stating that "Gasoline is now in general use as a motor fuel, in both public and private transportation, and is necessary in carrying on the commerce of the people of this State;" that "the business of selling and marketing gasoline has become demoralized because of the attempt on the part of some dealers to

monopolize the business and destroy competition, and because of the unfair and improper practices in the trade, it has become necessary for the State to control and regulate the business of selling and marketing gasoline in order to prevent the destruction of competition and to prevent extortionate prices and to preserve both public and private commerce and transportation." Following this declaration the said Act in the said first section enacts thus: "It is therefore hereby declared that the sale and marketing of gasoline in this State is impressed with public use." This Court must assume that this condition of marketing and selling gasoline existed at the time this statute was enacted and became effective on April 8th, 1927, and before the Court can entertain jurisdiction of this cause the plaintiff must allege in the statement of its grievances facts that show that it is not engaged in any practices having the effect condemned in said Act, in this its first section, and therefore states no ground for invoking the jurisdiction of this court for an injunction to prevent the execution of said Act.

Now, not waiving the benefit of their motion to dismiss, but relying thereon, these defendants for answer to plaintiff's bill, in so far as they are advised it is necessary or material for them to answer, say:

I.

If the plaintiff is a corporation organized under the laws of the State of Texas, and is and has been for a number of years domesticated by compliance with the statute laws of the State of Tennessee for the doing of the business for which it was chartered in said State, these are facts which rest upon the plaintiff to show which it can easily do if true, and therefore are not admitted, but plaintiff is put to the proof of the same as alleged.

The defendants deny that the plaintiff has continuously for several years been qualified under the law of the State of Tennessee to be doing business in the State, because of the connection of the plaintiff with the Standard Oil Company, hereinafter referred to, and by reason of the conduct of the Standard Oil Company, to be stated hereinafter, in which the plaintiff has been connected and has co-operated with the said Standard Oil Company prior to the enactment of the said Act for a long period of time, and in which acts and conduct, in violation of the law of the State, affecting the business of marketing and selling oil and gasoline in Tennessee, it was connected with and participated in at

the time of the passage of said Act, and at the time it filed this bill.

That this Court may have an accurate and clear understanding of the condition of the petroleum industry and trade existing in Tennessee at the time of and long before the enactment of the Act in question, and which still exists, which was brought about by the plaintiff and other companies and interests linked and allied with it and the Standard Oil Company, or Standard Oil group of companies, hereinafter to be mentioned, the defendants deem it necessary to an orderly understanding of this case to make a statement of certain facts connected with such industry and trade that have occurred in this State, and the affects of which are still productive and efficient in controlling the prices of petroleum products, including gasoline, to the great wrong and prejudice of the public by forcing it to pay unreasonable and extortionate prices for gasoline to be used in transportation and all other activities necessarily connected with the commerce of the State and the business and social interests of the people of the State. These particular facts, which are alleged to be true in substance and in fact, are as follows:

That during and prior to the year 1906, the Standard Oil Company of Kentucky, (a corporation by that name under the laws of the State of Kentucky) was doing business in the State of Tennessee, and in the early part of said year, or the latter part of 1905, said Standard Oil Company of Kentucky, with certain of its representatives, officials, or agents, were indicted in the Circuit Court of Sumner County, in the State of Tennessee, for violating Chapter 140 of the Acts of 1903, commonly known as and called "The Anti-Trust Law" of Tennessee; and in and by said indictment it was charged that said Oil Company and its officials, employees, or representatives had entered into a conspiracy for the purpose of lessening and destroying full and free competition in the sale of coal oil in the State of Tennessee, and in due course said Oil Company and its representatives were placed on trial and convicted of violating the terms and provisions of said anti-trust law, and the said Oil Company was fined Five Thousand Dollars, and one of the individual defendants was fined three thousand dollars, and judgment having been entered against said defendants they appealed to the Supreme Court of Tennessee, where in due course their appeal was heard upon the transcript of the record from the Circuit Court of Sumner County, with the result that it was held by said Supreme Court that said Oil Company and C. E. Holt, one of its employees, had been guilty of the conspiracy charged, and the judgment against

Holt was affirmed, but the Supreme Court of Tennessee held, sustaining the constitutionality of the anti-trust law, that the remedy against the offending corporation was not by fine, to which it was not subject, but a proceeding to oust it from doing business in the State, with the result that the judgment of the Circuit Court of Sumner County imposing a fine upon said Oil Company was reversed.

The opinion of the Supreme Court of Tennessee, delivered during its December term 1906, is officially reported in 117 Tennessee, pp. 618 to 679, inclusive, to which reference is hereby made.

After the rendition of said opinion directing a reversal against said Standard Oil Company of Kentucky upon the grounds above stated, the State of Tennessee upon relation of her then Attorney General, filed a bill in the Chancery Court of Sumner County against said Standard Oil Company of Kentucky, charging, in substance, that it had been guilty of conspiracies and agreements violative of the Tennessee anti-trust law, and praying that its permit or license to do business in the State of Tennessee be cancelled, and that it be ousted from doing business in the State of Tennessee, and enjoined from further carrying on its intra-state business in said State. Defense was made by said Oil Company to said bill and in due course of time the case came on for trial, whereupon the Chancellor, presiding in said Chancery Court, granted the relief prayed for and perpetually enjoined said Standard Oil Company of Kentucky from doing business in the State of Tennessee.

Thereupon said Standard Oil Company of Kentucky prayed and was granted an appeal from the decree of the Chancellor to the Supreme Court of Tennessee, and in due course, and according to the practice of said court, the case came on for hearing before the Supreme Court of Tennessee, whereupon by decree ordered about March 6th, 1908, but entered on April 11th, 1908, the decree of the Chancellor was affirmed by the Supreme Court of Tenessee, and it was, among other things, ordered and decreed as follows:

> "Therefore it appearing to the Court that the allegations of the original bill are sustained by the proof and that the defendants Standard Oil Company and its agents, Comer, Holt and Rutherford, and S. W. Lowe, W. H. Love, J. C. Crow and L. C. Hunter, as alleged in said bill, unlawfully entered into an arrangement and agreement for the purpose and with the view of lessening full and free competition in the sale of defendants' oil at Gallatin, and tending to and resulting in advancing the price of said oil to defendants' customers at

Gallatin; and it further appearing that the defendant, Standard Oil Company, in entering into said unlawful agreements violated the provisions of Section 1, of Chapter 140 of the Acts of 1903, and subjected itself to the penalty prescribed by Section 2 of said Act, applying to foreign corporations, it is accordingly so ordered, adjudged and decreed.

And thereupon the Court doth further order, adjudge and decree that the defendant, Standard Oil Company, a foreign corporation, chartered and organized under the laws of the State of Kentucky, be and is hereby denied the right to do, and prohibited from doing business within this State, and its license or permit to do business within this State, issued on the 21st day of September, 1893, by the Secretary of State, be and hereby is cancelled and annulled, and said defendant, Standard Oil Company, its managers, agents, servants and attorneys, are hereby perpetually enjoined and restrained from doing or carrying on business within this State; but nothing herein shall be construed to in any way affect or apply to defendant's inter-state commerce, or to prohibit it from engaging in inter-state commerce within this State."

A duly certified copy of the entire decree of the Supreme Court of Tennessee is herewith filed as Exhibit No. 1 to this answer, and is made a part of the same.

The opinion of said Supreme Court of Tennessee, directing and authorizing said decree, Exhibit No. 1 hereto, is officially reported in 120 Tennessee, pp. 86 to 179 inclusive, to which reference is hereby made.

Thereupon the Standard Oil Company sought and secured a writ of error from the Supreme Court of the United States to the Supreme Court of Tennessee for the purpose of reviewing the decree of said Supreme Court of Tenenssee, and in due course, upon the transcript of the record from the Supreme Court of Tennessee, the case came on for hearing in the Supreme Court of the United States upon the record at large, including assignments of error filed by said Standard Oil Company, on or about April 20th, 1910, and on May 2nd, 1910, the Supreme Court of the United States affirmed the decree of the Supreme Court of Tennessee and the Chancellor of Sumner County. The opinion of the Supreme Court of the United States, officially reported, is found in 217 U. S., pp. 817 et seq., and in due course the mandate of the Supreme Court of the United States was sent down to the Supreme Court of Tennessee directing an affirmance of its decree, hereinbefore referred to, and a certified copy of said mandate and the decree of the

Supreme Court of Tennessee thereon, directing the execution of its former decree, is herewith filed as Exhibit No. 2 to this answer, and made a part of the same.

At that time, that is, during the ouster proceedings by the State of Tennessee against the Standard Oil Company of Kentucky, all of the stock of said Oil Company was owned by the Standard Oil Company of New Jersey, and said Standard Oil Company of Kentucky was owned, dominated and controlled by said Standard Oil Company of New Jersey.

After the decision and decree of the Supreme Court of Tennessee, hereinbefore referred to, (Exhibit No. 1) restraining the said Standard Oil Company of Kentucky from doing business in Tennessee, its owner, the Standard Oil Company of New Jersey, organized, or caused to be organized, the Standard Oil Company of Louisiana.

At the time of the organization of said Standard Oil Company of Louisiana, on or about the 16th day of June, 1909, the said Standard Oil Company of Kentucky had secured a writ of error from the Supreme Court of the United States to the Supreme Court of Tennessee, as hereinbefore shown, and the cause was then pending in the Supreme Court of the United States. Prior to the affirmance of the decree of the Supreme Court of Tennessee, as aforesaid, the Standard Oil Company of Louisiana had not attempted or sought to do any business in the State of Tennessee, or applied for permission or license to do business in this State, but on May 6th, 1910, only four days after the Supreme Court of the United States had affirmed the ouster decree against the Standard Oil Company of Kentucky, as hereinbefore shown, the said Standard Oil Company of Louisiana filed a copy of its charter with the Secretary of State of Tennessee, and went through the form of complying with the requirements of the foreign corporation laws of Tennessee with reference to such corporations doing business in said State. The facts are, that both of said corporations, to-wit, the Standard Oil Company of Kentucky and the Standard Oil Company of Louisiana, were but dummies, though clothed with corporate form, and were absolutely owned, dominated and controlled by the Standard Oil Company of New Jersey, which prior to the injunction referred to was doing business in the State of Tennessee under the name and guise of the Standard Oil Company of Kentucky, its creature and dummy, and after the Supreme Court of the State of Tennessee was affirmed by the Supreme Court of the United States, the said Standard Oil Company of New Jersey continued to do business in the State of Tennessee through its dummy, the Standard Oil Company of Louisiana, by a

simple subterfuge of filing with the Secretary of State a copy of the charter of the said Standard Oil Company of Louisiana, and changing the name in Tennessee from the Standard Oil Company of Kentucky to the Standard Oil Company of Louisiana.

There was no change whatever in the management of the business. Not only was it dominated and controlled by the same owner, but it retained the same management in the State of Tennessee, the same officials, the same employees, and using the same property and paraphernalia of trade—the only difference being that upon the tank wagons, stations and stationery the name "Kentucky" was stricken out and the name "Louisiana" was substituted, so that the corporate or business name appeared to the public and the Standard Oil Company of Lousiana instead of the Standard Oil Company of Kentucky. The officials of the State of Tennessee did not know at the time the copy of the charter of the Standard Oil Company of Louisiana was filed in the office of the Secretary of State of Tennessee that it was but a dummy owned and controlled by the Standard Oil Company of New Jersey, which was also the owner of the offending Standard Oil Company of Kentucky, which had been ousted from the State; and said officials of the State of Tennessee did not know that the said "managers, agents, servants and attorneys" of the Standard Oil Company of Kentucky, who had been enjoined from doing business in the State of Tennessee, as shown by said decree, Exhibit No. 1 hereto, were continuing to do and carry on the same business under the fraudulent name and guise of the Standard Oil Company of Louisiana. The facts with reference to this fraud and subterfuge were developed recently.

Therefore, defendants say and aver that the Standard Oil Company of Louisiana being but a dummy of the Standard Oil Company of New Jersey, and the reflection of its dummy the Standard Oil Company of Kentucky, was fradulently substituted by the common owner, the Standard Oil Company of New Jersey, into the oil business of Tennessee from which said Standard Oil Company of Kentucky had been ousted, and the said Standard Oil Company of Louisiana has never legally and properly complied with the laws of the State of Tennessee, and it has never had, and it has not now the right to do business in the State of Tennessee. Defendants charge that said Standard Oil Company of Louisiana came fraudently into the State of Tennessee, in the manner aforesaid, and is now in contempt of the decree and injunction of the Supreme Court of Tennessee and of the Chancery Court of Sumner County.

Defendants deny that the Standard Oil Company of

Louisiana has been legally qualified to do business in the State of Tennessee, or that it has any standing in this court, and avers that coming into this court with unclean hands it has no standing in this court of equity to challenge the legislation of the State of Tennesee affecting its claimed domestic trade and commerce, and is not in a position to question in this Court of Equity the validity of the Act described in the bill in this cause.

Defendants are informed, believe and therefore charge the fact to be that the Standard Oil Company of Louisiana, as the representative and dummy of the Standard Oil Company of New Jersey, has continued the system of rebates and preferences to retail dealers, and other illegal methods hereinafter to be specifically indicated, from the date of the alleged chartering of the Standard Oil Company of Louisiana, and its alleged domestication in the State of Tennessee, up to the filing of this suit, and is continuing such practices for absolutely controlling the prices at which gasoline and other petroleum products are sold in Tennessee, at extortionate prices, and have a fixed determination to continue such control and management of the sales of such products at its will to the public of Tennessee. The Standard Oil Company of New Jersey simply uses to carry out this policy the Standard Oil Company of Louisiana, owned and controlled by it, as one of its allies in carrying out such control, to the great damage and detriment of the users of such products.

From the foregoing recitations and allegations of fact as to the policy of the said Standard Oil Company of New Jersey to control absolutely at its will the selling price of gasoline, and other petroleum products, in the State of Tennessee, through its subsidiaries or foreign corporations operating in Tennessee, that Company and the Standard Oil Company of Louisiana, by it owned and absolutely controlled, both said companies have continuously been and are now in contempt of the decree of the Chancery Court and the Supreme Court of Tennessee, affirmed, as aforesaid, by the Supreme Court of the United States, in attempting to do business in this State since the issuance of the injunction hereinbefore referred to and set out.

Defendants further say, and so aver and charge, that by reason of its connection with and its participation in the said policy of the said Standard Oil Company of New Jersey, and said Standard Oil Company of Louisiana, the plaintiff, Texas Company, is itself likewise in contempt of the said decree of injunction, in attempting to do business in this State in the marketing and selling of gasoline.

II.

The defendants are advised that it is both proper and necessary to give a brief history of the development of the petroleum industry in this country, for the purpose of showing the causes that made it expedient for the enactment of the Act, challenged in plaintiff's bill, for the benefit of the people of Tennessee, which are directly connected with and a part of the unjust and unfair conditions that existed for many years prior to the passage of said Act, in practically all the States of the United States, whereby the public in the different states has been compelled to pay unreasonable extortionate prices for gasoline.

The history of the petroleum industry in this country is practically the history of the Standard Oil Company:

The first Standard Oil Company was organized in 1870, in the State of Ohio, by John D. Rockefeller, William Rockefeller, Samuel Andrews, Henry M. Flagler and Stephen D. Harkness. Between the date of the organization of this company and April 1879, the men named, in connection with Henry H. Rogers, John D. Archibald, O. H. Payne and C. M. Pratt, had acquired control of more than forty competitive refineries, and were in control of more than thirty companies engaged in the oil business. On April 8th, 1879, the stock of the Standard Oil Company, as well as that of other companies, was conveyed to three trustees. On the 2nd day of January 1882, a new trust agreement was entered into by the parties mentioned, together with other associates, with reference to the management of the companies over which they had acquired control, and for the purpose of extending this business.

The agreement provided that all the stock of these companies was to be placed in the hands of nine trustees, which included the said Rockefeller, Flagler, Rogers and Archibald. The fourth provisions of this trust agreement is as follows:

> "(4) Each of said corporations shall be known as the Standard Oil Company of ———————— (and here shall follow the name of the state or territory by virtue of the laws of which said corporation is organized.)

This combination was declared to be illegal by the Supreme Court of Ohio in the case of State ex rel Watson vs. Standard Oil Company, 15 L.R.A. 145, decided by the Supreme Court of Ohio on March 2nd, 1892, and the Standard Oil Company of Ohio was forbidden to do business in that State.

Before this litigation, however, the trustees named had

organized the Standard Oil Company of New York, and had acquired control of several other subsidiary companies. To meet the situation obviously resulting from the adverse decision of the Supreme Court of Ohio, the charter of the Standard Oil Company of New Jersey was emended and its stock increased from $10,000,000.00 to $110,000,000.00. The stock in the various companies that had been acquired by the trustees was transferred to the Standard Oil Company of New Jersey and its stock certificates issued in lieu thereof, and thereafter the affairs of the combination were managed by the Board of Directors of the Standard Oil Company of New Jersey, who were the same men who had operated under the trust agreement.

A bill was filed in the United States District Court for the Eastern District of Missouri against the Standard Oil Company of New Jersey and seventy other subsidiaries, including the Standard Oil Company of Kentucky, the Standard Oil Company of California, the Standard Oil Company of Indiana, the Standard Oil Company of Nebraska, the Standard Oil Company of New York, the Standard Oil Company of Ohio, and the Waters-Pierce Oil Company. The bill alleged the facts hereinbefore recited, and charged that these companies were being operated in violation of the Sherman Anti-Trust Act. The bill was sustained and the combination held to be illegal, in the District Court, in November 1909, (173 Fed. 177). This decree was affirmed by the Supreme Court of the United States in May 1911, (211 U.S. 1 Book 55, p. 619).

The facts upon which the Supreme Court of the United States granted relief and predicated its decree are, in substance, as follows:

That both said Standard Oil Trust from 1882 to 1899, and the Standard Oil Company of New Jersey since 1899, had monopolized and restrained commerce in petroleum and its products. The particular practices, unlawful agreements and combinations with alleged independent concerns, are set forth and referred to in the opinion of the Court; and without attempting to elaborate, or set forth in detail, all of the unlawful practices indulged in by said Standard Oil Companies, the following outstanding facts are referred to, to-wit: Rebates, preferences and other discrimnatory practices in favor of combinations with the railroad companies; restraint and monopolization by contract with pipe lines, and unfair practices against pipe lines; contracts with competitors in restraint of trade, unfair methods of competition, such as local price cutting at points where necessary to suppress competition; espionage of the business of competitors, the incorporation and operation of bogus independent

companies, and payment of rebates on oil with intent to stifle and prevent competition; the *division of the United States into Districts*, and the limiting of the operation of subsidiary corporations as to such districts so that competition in the sale of petroleum products between such corporations were entirely eliminated and destroyed.

The defendants charge that practically all of the said unfair practices and methods for controlling absolutely the selling price of gasoline, (and as for that matter other petroleum products not referred to in the Act here challenged) existed in Tennessee and all other States, and are and have been practiced by the different corporations, agents, etc., owned and controlled by the Standard Oil Compaines, grouped as hereinafter stated, and such methods of controlling the prices have all the time been and are still being used to exact unreasonable and extortionate prices from the public using and having to purchase gasoline.

Defendants state that the practices in favor of combination with railroad companies, above mentioned, have perhaps been abandoned because of the laws of the United States and the different States passed on that subject, but the other methods of controlling absolutely the price, and thereby securing the power to dominate the oil industry, and sale of gasoline and other oil products, have been resorted to and are pursued by the Standard Oil Companies; and the plaintiff, The Texas Company, in Tennessee prior and up to the enactment of the Act herein questioned, linked with, and acting in concert with the said Standard Oil Companies is exercising the power to charge and exact, and in fact exacting by the said Standard Oil Companies and the plaintiff unreasonable and extortionate prices for gasoline sold in Tennessee; and such extortionate and unreasonable prices are now being exacted and paid by the public in Tennessee, and the plaintiff is insisting upon the right to do so in challeging the validity of this Act.

The Court held that the organization and management of the Standard Oil Company of New Jersey, and its subsidiaries and associates was illegal, and that such unfair and illegal practices for controlling the price of oil products had been pursued and used by the Standard Oil Company of New Jersey, and other defendant companies allied with it, and owned and controlled by it, in the manner stated in the opinion. The reasons and the facts for the decree made in said cause, dissolving the combination or trust as in violation of the Anti-Trust Act of July 2nd, 1890, known as the Sherman Law, are set out in the opinion in the said cause of the Standard Oil Company vs. United States,

221 U.S., on pages 75-77 of the opinion, in the following paragraphs:

"(a) Because the unification of power and control over petroleum and its products which was the inevitable result of the combining in the New Jersey corporation by the increase of its stock, and the transfer to it of the stocks of so many other corporations, aggregating so vast a capital, gives rise, in and of itself, in the absence of countervailing circumstances, to say the least, to the prima facie presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of combination which were resorted to in order that greater power might be added than would otherwise have arisen had normal methods been followed, the whole *with the purpose of excluding others from the trade*, and thus centralizing in combination a perpetual control of the movements of petroleum and its products, in the channel of inter-state commerce.

(b) Because the prima facie presumption of intent to restrain trade, to monopolize, and to bring about monopolization, resulting from the act of expanding the stock of the New Jersey corporation and vesting it with such vast control of oil industry, is made conclusive by considering (1) the conduct of the persons or corporations who were mainly instrumental in bringing about the extension of power in the New Jersey corporation before the consummation of that result, and prior to the formation of the trust agreements of 1879, and 1882; (2) by considering the proof as to what was done under those agreements and the acts which immediately preceded the vesting of power in the New Jersey corporation, as well as by weighing the modes in which the power vested in that corporation has been exercised, and the results, which have arisen from it.

Recurring to the act done by the individuals or corporations who were mainly instrumental in bringing about the expansion of the New Jersey corporation during the period prior to the formation of the trust agreements of 1879 and 1882, including those agreements not for the purpose of weighing the substantial merits of the numerous charges of wrong doing made during that period, but solely as an aid for discovering intent and purpose, we think no disinterested mind can survey the period in question without being irresistibly driven to the conclusion *that the very genius for commercial development and organization which it would*

seem was manifested from the beginning soon begot an intent and purpose to exclude others which was frequently manifested by acts and dealings wholly inconsistent with the theory that they were made with the single conception of advancing the development of business power by usual methods, but which, on the contrary, necessarily involves the intent to drive others from the field and to exclude them from their rights to trade, and thus accomplish the mastery which was the end in view, and considering the period from the date of the trust agreements of 1879 and 1882, up to the time of the expansion of the New Jersey corporation, the gradual extension of the power over the commerce in oils, which ensued, the decision of the Supreme Court of Ohio, the tardiness or reluctance in conforming to the commands of that decision, the methods first adopted, and that which finally culminated in the plan of the New Jersey corporation, all additionally serve to make manifest *the continued existence of the intent which we have previously indicated, and which, among other things,* impelled the expansion of the New Jersey corporation. The exercise of the power which resulted from that organization fortifies the foregoing conclusions, since the development, which came, the acquisition here and there which ensued of every efficient means by which competition could have been asserted, *the slow but resistless methods which followed by which means of transportation were absorbed and brought under control, the system of marketing which was adopted by the country was divided into districts and the trade in each district in oil was turned over to a designated corporation within the combination, all lead the mind up to a conviction of a purpose and intent which we think is so certain as practically to cause the subject not to be within the domain of reasonable contention.*" (Italics are ours.)

"The inference that no attempt to monopolize could have been intended and that no monopolization resulted from the acts complained of, since it is established that a very small percentage of the crude oil produced was controlled by the combination, is unwarranted. As substantial power over the crude products was the inevitable result of the absolute control which existed over the refined product. The monopolization of the one carried with it the power to control the other; and if the inferences which this situation suggests were developed, which we deem it unnecessary to do, they might well serve to add

additional cogency to the presumption of intent to monopolize which we have found arises from the unquestionable proof on other subjects."

Defendants state that aside from a colorable distribution of the stock held by the Parent Company, the order of the Supreme Court of the United States has never been complied with, and the evils condemned in the opinion of the Court in that cause, have never been remedied nor abandoned. The practices of the various Standard Oil Companies have been complained of and condemned by the courts in many States, and finally in 1923, the complaints, with reference to the conduct of the large petroleum corporations particularly the Standard Oil group of companies, became so general and wide-spread, that a committee was appointed by the United States Senate to investigate and report with reference thereto. An investigation, lasting several months, was conducted by said committee; the presidents of the various Standard Oil Companies, and other large petroleum corporations appeared and testified before said committee, and after a full investigation, the committee submitted to the Senate a unanimous report to which reference is here made. And, among other things, this report recites:

"The dominating fact in the oil industry today, is its complete control by the Standard Companies. Any discussion of the subject which does not frankly recognize this control can only be misleading. Standard Oil today fixes the price which the producer of crude oil receives at the well, the price which the refiner receives for his gasoline and kerosene, as well as the retail price paid by the consumer. The Standard Oil Group divides among the members of that group all the territory of the United States, and, with slight exceptions to be presently noticed, avoids all competition with other members of the group in the business of retailing gasoline and kerosene. Not only this, but two of the leading Standard Companies—New Jersey and New York—divide the world between themselves in retail marketing operations, and each carefully abstains from entering the territory of the other, while both refrain from competing with the Anglo-American Oil Company (Ltd) (One of the original Standard Group) in the retail trade in the British Isles."

"Through the Standard control of the pipe lines connecting the producing centers of the West with the consuming centers of the East and Middle West, not only is the price fixed according to the will of the Standard Group which any other interest must pay for

the transportation of petroleum, but members of the group really determine whether any concern outside their group shall have petroleum transported at any price."

"The methods by which the Standard Companies control the oil industry today, are more subtle than those by which the Standard Oil Company of New Jersey, through its subsidiaries controlled it prior to the dissolution decree in 1911. But the results are the same."

And again:

"A careful examination of the evidence taken in this investigation will show that in respect to the above matters and others which lead to the outlawing of the Standard Oil monopoly, the same conditions exist as existed when the decree of the Supreme Court was entered, and that in some respects the industry as a whole, as well as the public, are more completely at the mercy of the Standard Oil interests now than they were when the decree of dissolution was entered in 1911. This point cannot be too strongly emphasized, for the reason that the intolerable conditions in the oil industry which are established in this investigation cannot be corrected while the Standard Oil dominates the business as it does today."

And again:

"The controlling factor in fixing the retail price of gasoline and other petroleum products is the dominance by the Standard Oil Companies of the retail market for these products throughout the United States, and particularly of gasoline and kerosene. Just as the Standard Companies fix the price which the producer must accept at the well for his crude oil, as do they fix the price which the consuming public has to pay at retail for gasoline, and to a large extent for kerosene. The great Standard Oil marketing companies, by confining their operations to a single fixed territory, are able to easily control the retail price of gasoline and kerosene in their respective territories."

And again:

"The companies of the Standard group co-operate with each other where such co-operation seems desirable or necessary in order to meet the competition of independents."

And again:

"It must be obvious from the facts set forth in this report that the business cannot go on as at present organized and conducted. It is essential to the life of

the industry and vital to the public also that neither the public nor the small independent producers and refiners shall be left as at present to the mercy of a combination which advances or depresses prices as it pleases. Unless some means can be found to prevent the manipulation of prices by the large companies, and particularly the Standard group, it is as certain as any future event can be that gasoline prices in the near future will be so advanced as to put gasoline beyond the reach of the public generally as a motor fuel. Great as the capital invested in the business has become, important as the business is to thousands who are engaged in it and to other thousands who receive dividends from it, there is a still more important interest to be reckoned with, and that is the interest of the public. Petroleum and its products have become an absolute necessity. The business is clothed with a great public interest. The gas plants, electric light plants, railroads and street cars are no greater universal necessities than petroleum and its products."

The committee recommended Government control of the industry in various ways set out in the report, and also, recommended criminal prosecution of the officers of the companies, and that action be taken by the Department of Justice for the annullment of the so-called patents and leases herein complained of, and that the pipe lines operated by these companies in the aid of their combination be made common carriers and be under the control of the Government.

This report was made on the —— day of ————— 1923, and notice is here given that a full copy of said report, if procurable, will be offered upon the hearing of this cause.

Following, and it may be as a result of the aforesaid and other investigations and disclosures, the Honorable Harlan F. Stone, formerly Attorney General of the United States, filed on the 25th day of June 1924, a bill in equity on behalf of the United States, in one of the District Courts of the United States at Chicago, against the Standard Oil Company of Indiana, the Standard Oil Company of New Jersey, the Standard Oil Company of Kentucky, the Standard Oil Company of California, the Standard Oil Company of Kansas, the Standard Oil Company of Ohio, the Standard Oil Company of Louisiana, the Texas Company, plaintiff herein, and numerous and subsidiary companies. Later a supplemental bill was filed in said cause by the present Attorney General of the United States. In said suit it was charged by the United States that said defendants, including plaintiff herein, were in an unlawful combination to

dominate and control the manufacture and marketing of gasoline in violation of the laws of the United States.

The facts upon which the United States sought relief against said defendants in the aforesaid suit are set out in the aforesaid original and supplemental bills, and these defendants deem it proper and do now show and aver that said facts are as stated in said original and amended and supplemental bills, and in order that this Court may understand some of the salient facts upon which the United States predicated its aforesaid suit in equity, an excerpt from said pleading is here set out as follows:

"Defendants are of two classes:

(a) Standard Oil Company (of Indiana), Standard development Company (to the extent that its parent company, Standard Oil Company of New Jersey has conveyed to it patents and alleged patent rights relating to cracking processes), Texas Company (plaintiff herein) and Gasoline Products Company, hereinafter referred to as 'primary defendants'.

(b) All other defendants hereinafter referred to as 'secondary defendants.'

Each primary defendant owns numerous United States and foreign patents, and applications for patents of the character hereinbefore described. The term 'primary defendant' is used to designate these parties (a) because of the broad scope and importance of their asserted patent rights, (b) because all of said alleged patent rights are, by a system of cross arrangements hereinafter described, handled substantially as a unit or pool by said defendants in dealing with licensees, assignees, and grantees, under any of said patent rights, and (c) because these defendants are primarily responsible for the institution and continuation of the unlawful conditions and practices against which this suit is aimed.

Each secondary defendant is a party to an agreement or agreements with one or more of the primary defendants, by which agreement or agreements such secondary defendant has been given certain alleged patent rights, privileges, or immunities, as assignee, grantee or licensee. The term 'secondary defendant' is applied to these defendants for the reason, that although by entering into the agreements containing the restraints of inter-state and foreign trade hereinafter set forth, they have become parties to unlawful combination, conspiracy and monopoly herein complained of, the secondary defendants are subscribers to rather than the promoters of the same, they being unable to secure

manufacturing privileges under any of the alleged patent rights controlled by the primary defendants without agreeing to such trade restrictions and other terms as the primary defendants without agreeing to such trade restrictions and other terms as the primary defendants see fit to impose, and they being unwilling to incur the hostility of the primary defendants by employing the cracking process without their consent.

The primary defendants, seeking to restrain and monopolize the inter-state and foreign trade and commerce of the United States in gasoline and kerosene, and other products of petroleum, and to realize huge profits by extorting from all concerns engaged in the manufacture of cracked gasoline large sums in the guise of royalties, and to impose on all concerns so engaged onerous and oppressive conditions designed to insure to said defendants a monopolistic control of such trade and commerce, have made and entered into, one with another, a series of agreements, (herein called primary agreements) whereby alleged rights were conveyed to each other under their respective patents and asserted rights were effectively pooled. By granting rights under prospective as well as existing patents, provision was made for extending the combination and monopoly beyond the life of any patent now owned by the defendants. Each thus protected its patents and asserted rights against attack by the others, and they were enabled to present a solid front to all manufacturers of gasoline who were compelled by competition to avail themselves of the economies resulting from the use of the cracking process.

Said agreements provided for the payment of heavy royalties ranging from a half of a cent to a cent and a quarter per gallon on gasoline produced by the cracking process for domestic consumption.

These charges, included by defendants as a part of their cost of manufacture, have had the effect to burden and restrain interstate and foreign commerce in the above mentioned commodities by increasing the price thereof. In addition, numerous, onerous and oppressive covenants and conditions are included in said agreements which directly impede and restrain such trade and commerce by restricting the production of such commodities and by securing to certain of said defendants, more especially the Standard Oil Company of Indiana, a virtual monopoly of the trade and commerce therein in particular territories. Said primary agreements not only purport to convey manufacturing rights

but also authorize the respective licencees to grant sublicenses thereunder containing like onerous restrictions and provisions.

Numerous other manufacturers of gasoline and petroleum products, finding it necessary to employ the cracking process in order to compete with their rivals, and fearing to incur the hostility of the primary defendants so banded together by employing such process without their license, have accepted from such primary defendants licenses under the patents and asserted rights which have been pooled as aforesaid, in and by which they have agreed to pay to such primary defendants huge royalties as aforesaid, and have submitted to the numerous onerous and oppressive covenants and conditions hereinabove mentioned. Each manufacturer receiving such a license has become a party to the unlawful combination and monopoly, has estopped itself from hereafter questioning the validity of the patents under which it is licensed, and in a majority of instances, such licensees have reciprocally agreed to license the primary defendants under any patents relating to the cracking art which they have or may obtain in the future."

The distinctive features of said licenses are:

(a) A combination among the different Standard companies setting out the territory in which each may manufacture and sell gasoline.

(b) The dominion and control of all so-called independent refineries, in that these so-called independent refineries are restricted in the amount of gasoline they are allowed to manufacture. They are restricted in the territory in which they are allowed to operate and sell, and they are required to pay huge royalties to the Standard Companies for the privilege of manufacturing gasoline.

(c) The result is that the Standard companies dominate and control the production and manufacture of gasoline, and there is really no such thing as an independent refinery.

Said litigation between the United States and said Oil Companies is still pending. A great deal of proof has been taken and defendants are informed that the cause is soon to be tried.

In the said suit filed by the United States through its Attorney General, Harlan F. Stone, on the 25th day of June, 1924, charging the plaintiff herein, The Texas Company, and other Standard Oil Companies, hereinbefore mentioned, with being in an unlawful combination to dominate and control the manufacture and marketing of gasoline in violation of the laws of the United States, the plaintiff

herein is made one of the "primary defendants," the other primary defendant being the Standard Oil Company of Indiana, and the Standard Development Company (to the extent that its parent company, the Standard Oil Company of New Jersey, has conveyed to it patents and alleged patent rights relating to cracking processes.) The other defendants in that suit, to-wit, the Standard Oil Company of New Jersey, the Standard Oil Company of Kentucky, the Standard Oil Company of California, the Standard Oil Company of Kansas, the Standard Oil Company of Ohio, and the Standard Oil Company of Louisiana, were named as "secondary defendants." Each primary defendant is alleged to own numerous United States and foreign patents, and application for patents of the character designated and described in a previous part of the bill—that is, patents claimed by the Standard Oil Companies made defendants in the bill, (the primary as well as the secondary defendants) securing the right to control the manufacture of gasoline. The government is alleged to charge these patents as being fraudulently obtained.

It is charged that all of the Standard Oil Companies made defendants, soon after the dissolution of the Standard Oil Trust under the decree of the Supreme Court in 1911, entered into a scheme for dominating and controlling the entire production of gasoline by means of contracts among themselves and with refiners, which contracts are called licenses. Defendants therefore charge upon information and belief that the facts set forth in the said Senate report, as a result of a full and complete investigation of the oil industry and trade, including gasoline, in the United States, including the State of Tennessee, and the facts set forth in the said bill filed by the Attorney General of the United States on the 25th day of June, 1924, and the amendment thereto, show that the plaintiff is now and has been for many years a party to the undertakings and agreements entered into, and has in every sense carried them out for the absolute control of the sales prices of gasoline and other oil products in the State of Tennessee, and that it is co-operating with the Standard Oil Companies hereinbefore mentioned, and has been for a period of many years, in exacting unreasonable and extortionate prices for gasoline sold to the public in the State of Tennessee, by the unfair and illegal methods hereinbefore stated and charged against the said Standard Oil Companies in the marketing and sale of gasoline in said State of Tennessee. The Standard Oil Company of New Jersey, in truth and in fact, since the dissolution of the Standard Oil Trust by the Supreme Court of the United States, has dominated and controlled the entire

industry of the United States and the prices at which all petroleum products, including gasoline, have been sold from time to time, and still does by a division of the territory of the United States hereinbefore set out as a fact and declared to be a fact by the Supreme Court of the United States.

To show how completely this control and domination is and still prevails in Tennessee, and that it is a fixed policy of the Standard Oil Companies to continue to control and maintain the power to control the sale of gasoline in Tennessee, defendants in addition to the illustrations hereinbefore made, state that among the territories in which the Standard Oil Company of Louisiana operates in the sale of gasoline and other oil products, in the State of Tennessee, and that whenever any competition appears from independents operating in any parts of the State, the said Standard Oil Company of Louisiana lowers the price of gasoline by picking certain retail dealers, or by selling at its own stations at lower prices, sufficient in the end to drive out such competition as they desire to be driven out, and have all the time pursued that course and still pursue it. However, the said Standard Oil Company of Louisiana never loses anything by such special instances of variance from its extortionate and excessive prices, from the fact that elsewhere in the State or in other States, it raises the prices for the time being sufficient to offset the loss. As an instance, during the years 1923, 1924 and 1925, the Standard Oil Company of Louisiana and its subsidiary companies operating in this State, in their effort to destroy competition in Tennessee, lowered the price of gasoline below the cost of importation and all other costs, to the consuming public, but at the same time raised the price from five to twelve cents a gallon in neighboring States. The price of gasoline to the consuming public was around fifteen cents a gallon when this effort was being made to drive out competition at that point, but at Hopkinsville, Kentucky, twenty-six miles north of Clarksville, the consuming public was charged by a subsidiary Standard Oil Company operating in that State, twenty-eight cents a gallon—making the consuming public at Hopkinsville, and adjacent territory in that State, pay for the losses in Clarksville, at the same time the Standard Oil Company of Louisiana would not cross the Kentucky line and sell at the Tennessee price, or any other price. The gasoline handled by the Standard Oil Company of Louisiana, and that handled by the Standard Oil Company of Kentucky, which was supplying Hopkinsville, during this period was shipped from the same refinery at Baton Rouge,

Louisiana, and the freight rates and costs were the same from that point to Hopkinsville and Clarksville.

III.

The extortionate and unreasonable prices being charged at the time, and for many years prior thereto, and sustained by the unlawful practices hereinbefore set out, having for their purposes and in fact succeeded in preventing competition to any worth-while extent, and then only for brief periods of time in localities here and there throughout the State, had become so unbearable that the Governor in response to the public opinion of the State, in his message to the present General Assembly, recommended legislation to control the distribution and prices of gasoline. He recited that the people of the State had been victimized long enough in the excessive cost of gasoline; that the State regulated the cost of gas and electricity, a matter of far less importance than the regulation of the cost and distribution of gasoline. The message stated that this commodity to all effects and purposes is now controlled by a monopoly; that there are numerous refiners and many distributors of gasoline in the State, but that a single company in reality made the market on gasoline; that sometimes there was competition in prices, but that was occasionally, and for the purpose of preventing and destroying competition, and such periods were always succeeded by higher prices. The Governor recommended a proper agency to be created to regulate prices of gasoline—its cost, distribution, etc., for the protection of all distributors of gasoline against the machinations and unfair practices of more powerful competitors, and that the public might be charged a fair and reasonable price for gasoline; the message declared that the people had submitted to extortion long enough, and that the people were being plundered without let or hindrance in the prices they had to pay for it, and were powerless under existing laws to compel relief. The result of this message and the suffering of the people of Tennessee from the rapacity of the monopoly of the one company referred to, and companies allied with it, was the passage of this Act here challenged in plaintiff's bill.

IV.

The length of time plaintiff has been engaged in selling gasoline in this State, the number of points at which it now is and has been selling it, how it conducts its business through agents and employes, and the extent of the business it has built up, and the details thereof, and what it expects to do in enlarging its business, all set out in para-

graph II of the bill, may be true or not, and is a matter of no concern in the determination of the issue presented in this cause.

V.

The Act in question is referred to in paragraph III of the bill, and plaintiff's view of the legal nature of its contents, and the constitutional objections made thereto, are all matters for the Court, and need no specific reply by referring to each of the contentions and paragraphs therein, and specifically pointing out the error of the contentions made. It is sufficient to say that none of the objections made to the validity of this Act by reason of certain provisions of the Constitution of the State of Tennessee and the Constitution of the United States are well taken in the judgment of the defendants, and the same are denied as having any merit.

VI.

Coming to paragraph IV of the bill, defendants deny that the Act is in conflict with either the Constitution of this State or of the United States for any reason mentioned therein. The Act does not violate any part of Section 20 of Article 1 of the Constitution of this State in being a retrospective law in the sense of that provision, and does not impair the obligation of any contract that may have been made prior to the passage of same. If any such contracts have been made they in no way affect the governmental police power exercised by the passage of this Act. It is not within the power of any domestic or foreign corporation to tie up by contracts the exercise of the police power in providing for the regulation of any trade or business impressed with a public interest. It does not violate Section 8 of Article 1 of the State Constitution in any respect insisted upon in said paragraph IV of the bill, nor does it violate Section 8 of Article, nor does it violate Section 8 of Article XI of the Constitution; nor does it violate Sections 1 and 2 of Article of the State Constitution in the procedure provided for ascertaining the charge to the public for gasoline—the maximum price for which it may be sold to the public. The provision that on appeal from the action of the Superintendent, approved by the Commissioner, such action may be reviewed in the Chancery or Circuit Court of Davidson County, and that the Court may in its discretion either supersede or modify such order fixing the maximum price in such manner and upon such terms and conditions as may appear to be proper, is in no way objectionable, and does not vest in the Court or the

Judicial Department of the State the right to exercise the legislative power of making the rates.

VII.

The Act does not conflict with the Due Process clause of the Fourteenth Amendment of the Constitution of the United States, nor the Equal Protection of the Law clause thereof. It does not violate either of these clauses of said Constitution by taking property without due process of law, or the equal protection clause of the law, in that it does not apply to the business of other persons and corporations engaged in selling other commodities in the State. It is not true that the business of marketing and selling gasoline in Tennessee is not impressed with any public interest such as would justify legislative control as to prices. The statement in said paragraph that there is no justification for a law which limits and restricts plaintiff and others engaged in the sale of gasoline in the State of Tennessee in such a way as to protect the middleman, regardless of the interest of this plaintiff and others engaged in the sale of gasoline, on the one side, and the public on the other side, is a mere assertion and is erroneous in law and in fact as to the purpose and effect of the Act here challenged.

The Act does not violate Section 10 of Article 10 of the Constitution of the United States denying Congress the power to pass laws impairing the obligation of contracts, nor does it violate the commerce clause vesting in Congress the exclusive right to regulate commerce among the several States.

VIII.

The several contentions in paragraph VI of plaintiff's bill, assigned for this Court taking jurisdiction by injunction to prevent the execution of this Act, are unsound, and afford no ground for the jurisdiction invoked. First, it is not true that there will be a complete cessation of the sale of gasoline in the State of Tennessee for a long period of time; second, the defendant is a foreign corporation and cannot do business in this State unless it complies with the statutes of the State permitting it to domesticate for doing business in the State. The State can fix its own conditions for permitting such corporation to do business in the State, and if such conditions are not satisfactory to the foreign corporation—which cannot be admitted in the first instance, and if the conditions are added to or become heavy while it is in the State under its admission, it has the simple remedy to retire from the State, and when admitted it accepts the admission with the knowledge that under the law

the State can change the condition upon which it may continue to do business. The conditions under which this Act is to apply to foreign corporations are the same that apply to domestic corporations in the same business, therefore, there is no denial of equal protection of the law of the State to such foreign corporation.

IX.

For the reasons stated in the motion, the plaintiff has no right to invoke the jurisdiction of the Court for injunctive remedy—nothing having been done to prejudice its constitutional rights, and nothing may ever be done having such effect, and nothing has been done or shown to this Court upon which an injunction could operate. Further, it cannot invoke the jurisdiction of this Court until it shall have submitted to the procedure for the protection of its constitutional rights, and exhausted every step provided in that procedure to assert such rights.

The procedure outlined for ascertaining what the maximum charge shall be for gasoline is strictly within the due process clause of the Fourteenth Amendment, and within the provisions of the Constitution of the State. Further, the plaintiff has a complete remedy provided by the law of the State to protect its property and its business, by the simple remedy of withdrawing from the State, and shows no distinct head of equity jurisprudence necessitating the action of this Court by injunction in its behalf.

The other objections made in said paragraph VI are certainly without merit, and nothing need be said in reply thereto.

The statute having declared that the sale and marketing of gasoline in this State is impressed with public use, the law presumes that the nature of that business, and its conditions were such as to warrant the enactment of this Act. This Court must take judicial cognizance of the nature of the business of marketing and selling gasoline and that the sale of it by the public has become such, and was at the time of the passage of the Act, that the property connected with and invested in said business has been by the owner thereof devoted to a use in which the public has an interest, and that the owner thereof has granted to the public an interest in such use, and must to the extent of that interest in the public submit to be controlled by the public, for the common good as long as the owner maintains the use. Granted or recognition of the public interest in the use may be withdrawn or revoked by the owner ceasing to continue the use of it for the public, or in the public interest.

The business of selling and marketing gasoline in Tennessee has for many years been devoted to the interest of the public, to the use of the public, and the property used in such business likewise was devoted because it is a mere instrument of the business itself. The business by its circumstances and nature has arisen from private to public concern, and is therefore subject to the governmental control exercised by the General Assembly of this State in the Act here challeneged. The liberty of contract guaranteed by the Constitution of Tennessee and the United States is no more involved in the method of price regulation authorized by this Act than in any other proper forms of regulation of business and property affected by a public use, and the business of the plaintiff, and the property employed in the carrying on of its business is therefore subject to the governmental power of this State exercised in said Act.

The plaintiff, and other dealers, in selling and marketing gasoline in this State is now, was at the time of the passage of said Act, and for many years prior thereto devoting its business and property connected therewith to the use of the public. The very nature of the business is such that the public has an interest therein as long as it is carried on, and the legislative power of the State can regulate it as the Legislature of Tennessee has done in this instance. The character of it tends to a common charge or price that must be paid by the public if the commerce, economic and social interests of the State are to be served.

X.

The defendants show and aver that the plaintiff herein, and other like companies engaged in the business of refining and marketing gasoline, and having a practical monopoly of the sale of gasoline in the State of Tennessee, and by their methods and practices hereinbefore set out, have a settled policy to control the sale of gasoline, and by such control, which they have in fact, as hereinbefore averred, have been and are exacting extortionate and unreasonable prices therefor, to prevent which the people themselves could not without the aid of legislation protect themselves. Plaintiff and like dealers have by their representations as to its wide-spread useful qualities, particularly for power and motor purposes, so induced the people of Tennessee to the use of gasoline, particularly for motor and power purposes, that said commodity, by said plaintiff and others allied with it, and dealing therein, has been and is devoted to the public use, and has become and is affected with a public interest, and is therefore subject to reason-

able regulations as to its use and price by the State of Tennessee.

Defendants aver that gasoline has become of such general use as to affect directly or indirectly practically all of the people of Tennessee, as is shown by the fact that the sales of gasoline in Tennessee in 1924 amounted to more than ninety million gallons, and such sales were increased in 1925 to more than one hundred and ten million gallons, and in 1926 to more than one hundred and twenty-nine million gallons. There are in use in the State of Tennessee more than 280,000 motor vehicles, consisting of automobiles, trucks, motorcycles, taxicabs and busses, to the operation of which gasoline is an absolute necessity; and in addition to such motor driven vehicles, there are thousands of farm tractors, stationary gasoline engines, road making machinery and other kinds of machinery to which the use of gasoline has become necessary and indispensable.

In said State the use of gasoline has become and is necessary not only to the operation of motor driven vehicles used in trade and commerce, but to automobiles used by business concerns, and by families for their health, comfort and convenience.

By the use of gasoline bus companies and other common carriers have become important factors in the daily commerce of the State. In practically every county of the State, bus lines are used, and these are rapidly taking the place of railroads in local public transportation.

The General Assembly of the State of Tennessee has within the present week enacted legislation upon the subject of bus companies as common carriers. Without the use of gasoline trade and commerce carried on and operated through the agency of gasoline will be irreparably injured. Transportation by bus companies, automobiles, trucks and other motor driven vehicles depends upon the opportunity and ability of the public to secure gasoline at reasonable prices.

During the year 1926 the State of Tennessee built and constructed ——— miles of public highway, and now has under contract and under contemplation of construction, additional ——— miles of highway. It is necessary in the building, operation and maintenance of its highways for the State to use, and the State does use, large quantities of gasoline, and the building and maintenance of said highways at reasonable cost and expense depends upon the ability and opportunity of the State to secure gasoline at reasonable prices.

In practically all of the municipalities of the State maintaining and operating fire departments, the use of gasoline

has become and is indispensable for the proper operation of engines and other machinery connected with said departments and devoted to the use and protection of the public.

In nearly all of the niney-five counties of the State of Tennessee, the rural school houses serve wide-spread areas, and experience has shown that many of the children in such areas have been unable to attend the public schools, particularly during the winter months, for lack of means of transportation, with the result that at this time, in more than half of the counties of Tennessee, motor driven vehicles, operated by gasoline are being used to carry and transport to such school houses the children of Tennessee in order that they may receive the benefits of at least a primary education.

Without the use of gasoline for such motor driven vehicles—which use has been induced by plaintiff and other gasoline refiners and dealers—the school busses and trucks cannot be operated, and the result to the school children of Tennessee would be hurtful beyond calculation, if the State fails to secure gasoline at reasonable and fair prices for said busses and trucks. Further, not only is the use of gasoline necessary to commerce and trade within the State of Tennessee, but in its use for private and family automobiles, it contributes largely to the promotion, not only of the convenience and comfort, but of the health of the people of Tennessee, and for such purposes it is essential that gasoline be secured at a fair and reasonable price.

It has become a very necessity in the transportation of commerce, on the farm and in all the economic and other social activities of life.

From such uses as have been hereinbefore referred to and others of which the Court will take cognizance, it is manifest that gasoline and the opportunity to secure the same at reasonable prices have become necessary in practically every department of human activity, having to do, or connected with the development of the resources of the State, with the proper exercise of governmental functions in the building and maintenance of roads and the furnishing of means of reaching and making accessible the public schools of the State—with intra-state travel and commerce, and with the comfort, health, welfare and prosperity of the people of the State of Tennessee, with the result that gasoline has become affected with a public interest and has in fact been devoted to the public use so that its regulation is not only proper, but has become imperative under conditions existing in the State of Tennessee, as hereinbefore set out.

The defendants aver that the plaintiff is, from the facts

hereinbefore set out and averred, aiding the Standard Oil group, composed of the Standard Oil Company of New Jersey, and the other allied Standard Oil Companies hereinbefore named, in absolutely dominating the entire oil industry including the manufacture, transportation and marketing of gasoline, and that in fact the plaintiff is dominated and controlled by the said Standard Oil group in maintaining the power to control, and the actual control of the marketing and sale of gasoline in Tennessee, and has been so aiding said group in controlling the refining and selling of gasoline from the production of crude oil at the well until it is placed on the market and sold to the consumers thereof in the State of Tennessee at extortionate, extravagant and unreasonable prices, and is the policy of said group to maintain such domination and control and maintenance of such prices as it may see fit to charge the consuming public in Tennessee.

Defendants state and aver that in the way and manner hereinbefore set out, the plaintiff is and has been for some years aiding the Standard Oil group to control the manufacture of gasoline by certain patents and alleged licenses; that the plaintiff, the Standard Oil Company of New Jersey, the Standard Oil Company of Indiana and the Standard Oil Company of New York, have an interlocking license system under which each of these companies has licensed to the other the right to manufacture gasoline. The Standard Oil Company, however, being dominant in these license, in as much as the Texas Company is restricted to certain territories, as to the amount it is permitted to manufacture in certain other territories, as has heretofore been shown. It is, therefore, clear that these dominant companies are in a combination with reference to the very source of this industry, and this combination necessarily affects the whole course of dealings from the production to the delivery to the consumer, and the plaintiff is a party to this combination having such effect upon the price of gasoline in Tennessee.

Defendants aver that the plaintiff ever since the date of its alleged domestication in Tennessee, by agreement and understanding with the said Standard Oil group, and by in fact acting in concert with the said group, has been and is a party to the policy of the said group to absolutely control the selling price of gasoline to the public in Tennessee, and in maintaining its power and practice to sell gasoline to the public at extortionate and unreasonable prices.

XI.

Each and every allegation of fact in said bill contained not hereinbefore admitted or denied, is now denied and proof demanded thereof.

XII.

The defendants aver that the Act of the General Assembly of the State of Tennessee challenged by the bill is binding upon the plaintiff in respect to all matters referred to and covered by said Act, and defendants deny that plaintiff is entitled to restrain or enjoin these defendants or any other officials of the State of Tennessee from fully enforcing the terms and provisions of said Act.

XIII.

And now having fully answered in so far as they are advised it is necessary or material for them to answer, these defendants pray that the restraining order heretofore granted by the Court be dissolved, and plaintiff's bill dismissed.

FRANK D. HALL,
Commissioner of Finances and Taxation.
L. D. SMITH,
Attorney General of Tennessee.
R. M. ATKINSON,
District Attorney of Davidson County.
L. D. SMITH, *Attorney General.*
CHARLES T. CATES, JR.
J. J. LYNCH,
H. N. LEACH,
Attorneys for Defendants.

STATE OF TENNESSEE,
COUNTY OF DAVIDSON.

Personally appeared before me, the undersigned Notary Public in and for and within the County and State aforesaid L. D. Smith, ————, and ————, who having been by me duly sworn, state that they are the defendants in the cause of the Texas Company, instituted in the United States District Court at Nashville, Tennessee, being No. 305 upon the Equity Docket of said court, and that the statements made in the foregoing answer are true and correct to the best of their knowledge, information and belief.

L. D. SMITH.

Subscribed and sworn to before me on this the 30th day of April, 1927.

T. G. SETTLE, *Notary Public.*
December 19th, 1910.

Exhibit No. 1

STATE EX REL ATTORNEY GENERAL,
vs.
STANDARD OIL CO. OF KENTUCKY.

Be it remembered that this cause came on to be heard on this the 6th day of March 1908, before the Honorable the Judges of the Supreme Court of the State of Tennessee, upon the transcript of the record from the Chancery Court of Sumner County, the assignments of error filed on behalf of the complainant and defendant, both of whom were appellants, and argument of counsel having been heard, and the Court being of the opinion that the assignments of error filed on behalf of the defendants, Standard Oil Company, are not well taken, and the same are therefore overruled; and the Court being of the opinion that there is no error in the decree of the Chancery Court of Sumner County, the same is therefore in all things affirmed.

Therefore, it appearing to the Court that the allegations of the original bill are sustained by the proof and that the defendants, Standard Oil Company and its agents, Comer, Holt and Rutherford, and S. W. Love, W. H. Love, J. C. Crow and L. C. Hunter, as alleged in said bill, unlawfully entered into an arrangement and agreement for the purpose and with the view of lessening full and free competition in the sale of defendants oil at Gallatin, and that such unlawful agreement and arrangements tend to and resulted in lessening and destroying full and free competition in the sale of defendants' oil at Gallatin, and tended to and resulted in advancing the price of said oil to defendants' customers at Gallatin; and it further appearing that the defendant, Standard Oil Company in entering into said unlawful arrangements and agreements violated the provisions of Section 1, of Chapter 140 of the Acts of 1903, and subjected itself to the penalty prescribed by Section 2 of said Act, applying to foreign corporations, it is accordingly so ordered, adjudged and decreed.

And thereupon the Court doth further order, adjudge and decree that the defendant, Standard Oil Company a foreign corporation, chartered and organized under the laws of the State of Kentucky, be and hereby is denied the right to do and prohibit from doing business within this State, and its license or permit to do business within this State, issued on the 21st day of September 1893, by the Secretary of State, be and hereby is cancelled and annulled, and said defendant Standard Oil Company, its managers, agents, servants and attorneys, are hereby perpetually enjoined and restrained from doing or carrying on business within this State; but nothing herein shall be construed to in any way

affect or apply to defendants' interstate commerce, or to prohibit it from engaging in interstate commerce, within this State.

The defendant Standard Oil Company and John J. Vertrees, its surety on prosecution bond, will pay all the costs of this Court for which execution may issue. The costs of the Court below will be paid as adjudged by the Chancellor.

The opinion of the Court is herewith filed and made a part of the record.

Thereupon, the defendant Standard Oil Company filed its petition for a rehearing, which, after due consideration by the Court, is overruled and disallowed.

Thereupon, the defendant Standard Oil Company, by and through its counsel gave notice in open Court that it would apply to the Chief Justice of this Court for a writ of error to this Court from the Supreme Court of the United States, to operate as a supersedeas.

OFFICE OF CLERK OF THE SUPREME COURT FOR THE MIDDLE DIVISION OF THE STATE OF TENNESSEE:

I, DAVID S. LANSDEN, Clerk of said Court, do hereby certify that the foregoing is a true, perfect and complete copy of the Decree of said Court, pronounced at its December Term, 1907, in case of State ex rel Attorney General, against Standard Oil Co., of Kentucky, as appears of record now on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Court, at office in the Capitol at Nashville, on this the 16th day of April, 1927.

DAVID S. LANSDEN, *Clerk.*

Exhibit No. 2

STATE OF TENNESSEE
VS.
STANDARD OIL COMPANY OF KENTUCKY.

This day came the Attorney General and presented to the Court the mandate from the Supreme Court of the United States, which is in the words and figures following, to-wit:

(Seal) UNITED STATES OF AMERICA, *ss*:

The President of the United States of America.

To the Honorable the Judges of the Supreme Court of the State of Tennessee, Greeting:

Whereas, lately in the Supreme Court of the State of Tennessee, before you, or some of you, in a case between the State of Tennessee, upon the relation of Chas. T. Cates, Jr., Attorney General of the State of Tennessee, complainant, and Standard Oil Company of Kentucky, defendant, wherein the judgment of the said Supreme Court, entered in said cause on the 11th day of April, A.D., 1908, is in the following words, viz:

"Be it remembered that this cause came on to be heard on this the — day of April, 1908, before the Honorable the Judges of the Supreme Court of the State of Tennessee, upon the transcript of the record from the Chancery Court of Sumner County, the assignments of error filed on behalf of the complainant and defendant both of whom were appellants and argument of counsel having been heard, and the Court being of the opinion that the assignments of error filed on behalf of the defendants, Standard Oil Company, are not well taken, the same are therefore overruled, and the Court being of the opinion that there is no error in the decree of the Chancery Court of Sumner County, the same is therefore in all things affirmed.

Therefore, it appearing to the Court that the allegations of the original bill are sustained by the proof and that the defendants, Standard Oil Company and its agents, Comer Holt and Rutherford, and S. W. Love, W. H. Love, J. C. Crow, and L. C. Hunter, as alleged in said bill, unlawfully entered into an arrangement and agreement for the purpose and with the view of lessening full and free competition in the sale of defendants' oil at Gallatin, and that such unlawful agreements and arrangements tended to and resulted in lessening and destroying full and free competition in the sale of defendants' oil at Gallatin, and tended to and resulted in advancing the price of said oil to defendants' customers at Gallatin; and it further appearing that the defendant, Standard Oil Company in entering into said unlawful arrangements and agreements violated the provisions of Section 1 of Chapter 140 of the Acts of 1903, and subjected itself to the penalty prescribed by Section 2 of said Act, applying to foreign corporations, it is accordingly so ordered, adjudged and decreed.

And thereupon the Court doth further order, adjudge, and decree that the defendant Standard Oil Company, a foreign corporation, chartered and organized under the laws of the State of Kentucky, be and hereby is denied the right to do and prohibited from doing business within this State, and its license or permit to do business within this State issued on the 21st day of September, 1893, by the Secretary of State, be and hereby is cancelled and annulled,

and said defendant, Standard Oil Co., its managers, agents, servants and attorneys, are hereby perpetually enjoined and restrained from doing or carrying on business within this State, but nothing herein shall be construed to in any way affect or apply to defendants interstate commerce, or to prohibit it from engaging interstate commerce within this State.

The defendant, Standard Oil Company, and John J. Vertrees, its surety on prosecution bond, will pay all the costs of this Court, for which execution may issue. The costs of the Court below will be paid as adjudged by the Chancellor. As by the inspection of the transcript of the record of the said Supreme Court which was brought into the Supreme Court of the United States, by virtue of a writ of error agreeable to the Act of Congress in such case made and provided fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and nine, the said cause came on to be heard before the Supreme Court of the United States, on the said transcript of record, and was argued by counsel.

On consideration whereof. it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby affirmed with costs; and that the said complainant recover against the said defendant, Standard Oil Company of Kentucky, for its costs, herein, expended and have execution therefor. May 2, 1910.

And the said is hereby remanded to you the said Judges of the said Supreme Court of the State of Tennessee, in order that such execution and proceedings may be had in the said cause, in conformity with the judgment and decree of this Court, above stated as, according to right and justice, and the Constitution and laws, of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable John M. Harlan, Senior Associate Justice of the Supreme Court of the United States, the 10th day of August, in the year of our Lord one thousand nine hundred and ten.

Costs of complainant..$.....Paid
Clerk .....$.....By
Printing record .....$.....
Attorney .....$.....defendant

JAS. H. MCKINNEY,
Clerk of Supreme Court of the U. S.

Thereupon, the Attorney General moved that this cause be reinstated upon the docket of this Court, and that the decree entered herein on the 11th day of April, 1908, be duly executed. And upon consideration of said motion, the Court is pleased to order, adjudge and decree that the same be sustained, and that this cause be reinstated upon the docket, and said decree of April 11th, 1908, being the final decree of this Court in this cause, is hereby reaffirmed and directed to be executed, and the costs of this cause will be paid as decreed in said decree of April 11, 1908, and to that end it is further decreed that the State of Tennessee have and recover of the defendant Standard Oil Company of Kentucky, and John J. Vertrees, surety on Appeal bond, all the costs of this cause, for which execution may issue.

OFFICE OF CLERK OF THE SUPREME COURT FOR THE MIDDLE DIVISION OF THE STATE OF TENNESSEE

I, DAVID S. LANSDEN, Clerk of said Court, do hereby certify that the foregoing is a true, perfect and complete copy of the decree of said Court, pronounced at its December term, 1910, in case of State of Tenn. against Standard Oil Company of Kentucky as appears of record now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Court, at office in the Capitol at Nashville, on this, the 16th day of April, 1927.

DAVID S. LANSDEN, *Clerk.*
April 11, 1908.

EXHIBIT No. 3.

TO THE HONORABLE THOMAS B. LYTLE, CHANCELLOR, ETC., HOLDING THE CHANCERY COURT AT MURFREESBORO, IN RUTHERFORD COUNTY, TENNESSEE:

THE BILL OF COMPLAINT OF:

CONSUMERS' SUPPLY COMPANY, a corporation organized and doing business under the laws of Tennessee, with its place

of business in the City of Murfreesboro, in Rutherford County, State of Tennessee;

J. D. HUTTON, a resident and citizen of Shelbyville, in Bedford County, Tennessee;

W. D. HUDSON, a resident and citizen of Clarksville, in Montgomery County, Tennessee, doing business at Clarksville, in the name of Clarksville Oil Company;

E. E. JOHNSON and W. J. DALE, residents and citizens of Columbia in Maury County, Tennessee, doing business as the Columbia Oil Company;

A. L. JOHNSON, a resident and citizen of Pulaski, in Giles County, Tennessee, who, with the said E. E. Johnson is doing business in Pulaski, as the Pulaski Oil Company;

THE VALLEY OIL COMPANY, a Tennessee Corporation, doing business at Memphis, Shelby County, Tennessee;

THE BENZOL GAS CORPORATION, a Tennessee corporation, doing business at Nashville, Davidson County, Tennessee;

THE ESTES-COOPER OIL COMPANY, a Tennessee corporation, doing business at Nashville, Davidson County, Tennessee;

THE THOMPSON OIL COMPANY, a Kentucky corporation, doing business at Nashville, Tennessee;

THE ELK OIL COMPANY, a Tennessee corporation, doing business at Fayetteville, Tennessee;

SANFORD GARNER, a resident and citizen of Covington, in Tipton County, Tennessee;

THE CONSUMERS OIL COMPANY, a Tennessee corporation, doing business at Winchester in Franklin County, Tennessee;

B. E. DIGGS, a resident and citizen of Paris, in Henry County, Tennessee, doing business as the Paris Oil Company;

THE NASHVILLE OIL COMPANY, a Tennessee corporation, doing business at Nashville, in Davidson County, Tennessee;

H. N. MOORE, a resident and citizen of Dresden, in Weakley County, Tennessee, doing business in the name of the Dresden Oil & Gas Company;

C. E. DAVIS, a resident and citizen of Dyersburg, in Dyer County, Tennessee, doing business under the name of Tennessee Oil Company;

MARK H. SENTER, a resident and citizen of Chattanooga, in Hamilton County, Tennessee, doing business in the name of Southeastern Oil Company;

J. M. LASSING, A. P. CARVER, J. N. GUTHRIE and T. B. GENNINGS, residents and citizens of Davidson County, Tennessee, doing business under the name of Peerless Oil & Gas Company;

THE COOK SERVICE STATION, a Tennessee corporation, doing business in Rutherford County, Tennessee;

Exhibit No. 3 to Motion to Dismiss and Answer

A. P. STEPHENSON, a citizen and resident of Hamilton County, Tennessee, doing business under the name of Stephenson Service Station;
THE OBION OIL COMPANY, a Tennessee corporation, doing business at Union City, in Obion County, Tennessee;
E. F. PEEK, a citizen and resident of Athens, in McMinn County, Tennessee, doing business as the Crystal Oil Company, at Athens, McMinn County, Tennessee;
A. L. NEELEY, a citizen and resident of Columbia, in Maury County, Tennessee; and
ABEEL BROTHERS, a Tennessee corporation, doing business at Chattanooga, Hamilton County, Tennessee,

Complainants,

VERSUS

STANDARD OIL COMPANY OF LOUISIANA, a corporation organized under the laws of the State of Louisiana;
SINCLAIR REFINING COMPANY, a corporation organized under the laws of the State of Maine;
THE TEXAS COMPANY, a corporation organized under the laws of the State of Texas;
THE GULF REFINING COMPANY OF LOUISIANA, a corporation organized under the laws of the State of Louisiana;
THE PAN-AMERICAN PETROLEUM & TRANSPORT COMPANY, a corporation, organized under the laws of the State of Delaware;
THE MEXICAN PETROLEUM CORPORATION OF LOUISIANA, a corporation, organized under the laws of the State of Louisiana;
THE PRODUCERS & REFINERS CORPORATION OF TENNESSEE, a corporation, organized under the laws of the State of Tennessee, with its principal office in Memphis, Shelby County, Tennessee.

The foreign corporations herein named as defendants are all doing business in Tennessee, having gone through the form of complying with the foreign corporation laws of Tennessee.

Defendants.

THE COMPLAINANTS WOULD RESPECTFULLY SHOW THE COURT:

I.

That the complainants herein named, who are doing business as The Valley Oil Company, The Consumers Supply Company, the Columbia Oil Company, the Benzol Gas Corporation, The Estees-Cooper Oil Company, the Thompson

Oil Company, Sanford Garner, Pulaski Oil Company, the Elk Oil Company, The Consumers Oil Company, The Peerless Oil & Gas Company, Dresden Oil & Gas Company, Southeastern Oil Company, Tennessee Oil Company, Nashville Oil Company, Abeel Brothers, Clarksville Oil Company, The Dyersburg Oil Company, The Crystal Oil Company, The Paris Oil Company and The Obion Oil Company, are conducting in the places set out in the caption, respectively, business as wholesale dealers or jobbers in gasoline. They purchase gasoline from the refiners in what is known as tank car lots. Until recently a great many of the complainants made what was termed marginal contracts, that will be hereinafter explained more fully. The business of the complainants is to sell to operators of service stations, and through these service stations gasoline is sold directly to the consumers. The rapid increase in the use of automobiles and trucks in the State of Tennessee has created a great demand, and a rapidly increasing demand for oil and gasoline, and this is now becoming a very important business in the State of Tennessee. Some of the complainants enumerated under this paragraph are also engaged in the retail business, by operating service stations as set out in the next paragraph.

II.

The following complainants are engaged in the sale of gasoline at retail, by the operation of service stations at the places set out respectively in the caption: A. L. Neeley, The Stephenson Service Station, the Cook Service Station, Estees-Cooper Oil Company, Southeastern Oil Company, Thompson Oil Company, Benzol Gas Corporation, Abeel Brothers, and Peerless Oil & Gas Company.

III.

Complainants would now show the Court that the Standard Oil Company of Louisiana is in form a Louisiana Corporation; but was organized, all of its stock is owned, it is operated, dominated and controlled absolutely by the Standard Oil Company of New Jersey, a corporation organized in the following manner for the following purposes:

In 1870 John D. Rockefeller, William Rockefeller, Samuel Andrews, Henry W. Flagler and Stephen W. Harkness, organized the Standard Oil Company of Ohio. Between the time and April 1879, in connection with Henry H. Rodgers, John D. Archibald, O. M. Payne, C. M. Pratt, they acquired control of more than forty competitive refineries. In April of 1879, the stock of the said Standard Oil Company, as well as that of its subsidiaries referred to was placed in the

hands of three trustees, and on the 2nd day of January, 1882, a new trust agreement was entered into, under which the parties mentioned understood to control and dominate the oil industry of the United States, and in order to do this, they authorized the trustees to organize subsidiaries to be known as Standard Oil Companies of several different states in the Union. This trust agreement was declared illegal by the Supreme Court of Ohio, and in order to evade the effect of this decree the same parties organized the Standard Oil Company of New Jersey, and had conveyed to it the stock of all of these parties, and thereafter all of the various Standard Oil Companies in the United States were owned, dominated and controlled by the said Standard Oil Company of New Jersey. This continued until the Supreme Court of the United States, in a proceeding instituted by the Government of the United States, declared the business thus conducted by the Standard Oil Company of New Jersey, in operating and controlling the oil business of the country through the instrumentalities of the Standard Oil Companies mentioned, and their subsidiaries, set out in the decree of that court, to be an illegal combination in restraint of the laws of the United States, and the combination was ordered to be dissolved. This decree was entered by the Supreme Court of the United States in May, 1911.

IV.

While this proceeding was pending in the Supreme Court of the United States, the Standard Oil Company of Kentucky, one of the subsidiaries of the Standard Oil Company of New Jersey, owned, dominated and controlled by the Standard Oil Company of New Jersey, as hereinbefore set out, was made a defendant to an ouster proceeding instituted by the Supreme Court of Tennessee, said Standard Oil Company of Kentucky having domesticated in the State of Tennessee, and at its December term, 1907, the Supreme Court of Tennessee, decided that the said Standard Oil Company of Kentucky had been violating the anti-trust statutes of the State of Tennessee, and conducting its business in an unlawful and improper manner, and entered a decree ousting from the State and enjoining the said Company, its agents, employes, etc., from continuing to do business in this State. The case was appealed to the Supreme Court of the United States, and by that Court affirmed. In order to meet this situation, the Standard Oil Company of New Jersey, that had been doing business in Tennessee under the name of its subsidiary, the Standard Oil Company of Kentucky, went through the form of organizing a corporation in the State of Louisiana, called the Standard Oil Company

of Louisiana, and thereupon filed its charter and went through the form of complying with the corporation laws of the State of Tennessee, concealing from the officials of the State of Tennessee the fact that the pretended Standard Oil Company of Louisiana was in substance and in fact the same corporation as had been ousted from the State and enjoined from doing business in the State, and concealing from the officials and people of Tennessee the fact that the Standard Oil Company of New Jersey was doing business prior to the ouster proceeding in the name of the Standard Oil Company of Kentucky, and proposed to continue to do business in violation of the decree and injunction of the State in the name of the Standard Oil Company of Louisiana. By virtue of this deception, the said Standard Oil Company of New Jersey continued and has ever since that time continued to do business in the State of Tennessee. No change whatever was made in the control or management of the property, the business, nor in the personnel of its officials nor employes in the State. Its agents and officers simply had the word "KY.," that followed the name of "Standard Oil Company," erased and the word "LA.," substituted therefor, and this was the only respect that was ever paid to the decree and injunction of the Supreme Court of Tennessee.

V.

The Supreme Court of the United States held that the Standard Oil Company of New Jersey and its subsidiaries were doing business in violation of the statutes of the United States because they had divided up this country and allotted to each of the companies certain parts of the territory, so that there would be no competition between the various companies; and wherever real competition was attempted from independent sources the said Standard Oil Company would organize and operate subsidiary companies and buy out other companies to assist the Standard Oil Company that occupied that particular territory, and with these instrumentalities, by rebating, price cutting, and other improper methods destroyed and crippled competition for the purpose of dominating and controlling the oil industry.

The complainants would further show, that after the entry of the decree of the Supreme Court of the United States it is possible that some of the stock held by the Standard Oil Company in the subsidiary corporations, was restored to the equitable owners, that is to say, restored to John D. Rockefeller and his associates to hold for themselves, instead of being held in trust. But, if this was done, no other respect appears to have ever been shown to the decree of the Supreme Court, because the various subsi-

diaries continued in the combination theretofore existing for the control and domination of the oil industry in the United States. No two Standard Oil Companies in the United States now occupy the same territory or compete with each other. By virtue of said combination between the Standard Oil Company of New Jersey and its subsidiary, the Standard Oil Company of Louisiana, the Standard Oil Company of Indiana, the Standard Oil Company of Ohio, and various other Standard Oil Companies, one of these other Standard Oil Companies come into the State of Tennessee, or do business in this State; in other words, the people of Tennessee are deprived entirely of this legitimate competition that would result if these companies were not in this illegal combination.

Proceedings are now pending before the Federal Trade Commission against the Standard Oil Company of New Jersey, charging that it is violating the laws of the United States and is attempting to monopolize the oil industry, and one of the methods charged is that it owns and operates as a subsidiary, the Standard Oil Company of Louisiana, and has recently purchased a controlling interest in the Humble Oil & Refining Company, a Texas Corporation. The Standard Oil Company of New Jersey in that proceeding answered and admitted that it organized, owns, dominates and controls the Standard Oil Company of Louisiana, and that it in like manner had recently purchased a controlling interest and in that way the control of the Humble Oil & Refining Company referred to.

VI.

Until recently there has been operating in the Southwestern territory of the United States, including the State of Tennessee, the defendant, Pan-American Petroleum & Transport Company, a large oil refining corporation, which operates and sells under different trade names, but which controls and dominates the business of these subsidiaries. In order to enable the Standard Oil Company to further monopolize the oil and gasoline trade of this territory, it was desirable to have this competition removed. The Standard Oil Company of New Jersey and the Standard Oil Company of Louisiana were already under charges before the Federal Trade Commission. It is therefore obvious that it was necessary to have this competition removed through another source. The Standard Oil Company of Indiana, therefore, has recently purchased the control of this defendant, Pan-American Petroleum & Transport Company, and it is now being operated as a subsidiary to the Standard Oil combination and in perfect harmony with the Standard

Oil Company of Louisiana, and the people of Tennessee are therefore deprived of this competition.

VII.

The defendant, Gulf Refining Company of Louisiana operates a large refinery in the State of Texas, and perhaps in other places, and until the matters hereinafter complained of, it has been supposed to have been an independent corporation.

VIII.

The Texas Company of the U. S. A., owns and operates large refineries in Texas and perhaps in various other states. In like manner it has for sometime been selling gasoline in the State of Tennessee and until recently has been supposed to be entirely independent of the Standard Oil Company, except in the matters hereinafter to be referred to.

IX.

The Sinclair Refining Company, owns and operates refineries in the states of Louisiana, Texas and possibly in other places. The complainants do not know as to the stock ownership of this company, but it is operated in entire harmony with the Standard Oil Company, and complainants are advised and charge upon information and belief that it is operated as a subsidiary of the Standard Oil Company.

X.

The Producers & Refiners Corporation is a dummy corporation, owned and operated by the subsidiaries of the Standard Oil Company, to-wit, the Producers & Refiners Corporation of Parko, Wyoming, which, in turn is owned and controlled by the Standard Oil Company.

XI.

The complainants would now show the Court, that by virtue of the combination between the Standard Oil Company of New Jersey, and the other Standard Oil Companies organized in the manner hereinbefore set out, the said Standard Oil Companies in combination are able to, and do dominate, control and fix wholesale and retail prices of gasoline throughout the United States, and especially in the State of Tennessee, and surrounding territory.

XIII.

The other defendants herein named are now and for sometime have been aiding the various Standard Oil Companies in the exercise of this unlawful authority and power of control, and dominating these prices in the following manner:

They have established a system of selling by what is known as "marginal contracts," that is to say, when they make a contract with a jobber, engaged in the wholesale gasoline business, they provide that the price shall be based upon the Standard Oil Company's tank wagon prices on the day of delivery. For instance, if the sale is made to a jobber in Murfreesboro, the contract will recite that the price shall be a certain number of cents less per gallon than the Standard Oil Company's tank wagon prices on the day of delivery in Murfreesboro. There are three prices maintained: (a) the wholesale price to the jobber, which is known as the "tank car price"; (b) what is known as the "tank wagon price"; and, (c) the "service station price." The profit to the jobber consists in the differential between the tank wagon price and the price at which the refiner sells to him in tank car lots. For instance, if the marginal contract provides that the jobber shall pay the refiner three cents per gallon less than the Standard Oil Company's tank wagon price on the day of delivery, and the tank wagon price on the day of delivery is eighteen cents per gallon; then the jobber pays the refiner fifteen cents per gallon, and the three cent differential is his gross profit; out of which, of course he must pay his overhead and expense of operation. The difference between the tank wagon prices, or the prices which operators of service stations are required to pay the jobbers and the service station price, is the profit to the operator of the service station; for instance, if the tank wagon price is eighteen cents, and the retail service station price is twenty-one cents, then this differential of three cents per gallon is the profit made by the operator of the service station, out of which, he, of course, must pay his overhead and operating expense.

Complainants are advised and charge that by virtue of the strength given to the Standard Oil Company by the combination among themselves, and the support given to their price fixing by the defendants herein and other refineries who are willing to aid and promote the Standard Oil Company in the exercise of its right to fix prices, the dealers and consumers of Tennessee are at the mercy of the Standard Oil Company on the question of prices of gasoline. However, the prices fixed by the Standard Oil Company under which the complainants and other dealers in

Tennessee have been compelled to buy and sell gasoline, have been such, while the differentials herein referred to have been maintained, to permit them to carry on their business in a legitimate manner, yet the profit has been small.

XIV.

As stated, the increase in the use of automobiles and trucks in Tennessee and other parts of the country has increased so rapidly that business men all over Tennessee have been organizing independent marketing companies, that is to say, jobbing and retail companies for the purchase and sale of gasoline. This has grown to be quite an industry in almost every county in Tennessee.

XV.

All of said defendants herein set out, are not only refiners and doing a business of refining and selling in tank car lots, but they have entered the field as jobbers, and the defendants, Standard Oil Company, Pan-American Petroleum & Transport Company, The Gulf Refining Company of Louisiana, The Producers & Refiners Corporation of Tennessee, have begun operating service stations and selling at retail. And, in order to lessen and destroy competition in Tennessee, and especially to destroy the competition that comes from the independent local dealers throughout the state, both as jobbers and operators of service stations, they have entered into the unlawful combinations and agreements hereinafter set out:

(1) The Standard Oil Company of Louisiana, as has heretofore been charged, under the domination and control of its owner, the Standard Oil Company of New Jersey, combined with the Standard Oil Company of Kentucky, the Standard Oil Company of Ohio, the Standard Oil Company of Indiana, and all of the other subsidiaries of the various Standard Oil Companies, fix and control the price of gasoline in the State of Tennessee and keep out competition from the other companies named, and have allotted and divided among themselves the territory in the United States in which each of said companies will operate to more perfectly carry out this plan and purpose to dominate and control the gasoline business in the United States.

In order to more perfectly effectuate this purpose, the said Standard Oil Company of Louisiana has recently combined with its general manager in the City of Memphis, and its local managers in the Cities of Nashville, Murfreesboro, Chattanooga, Clarksville, Columbia, Pulaski, Fayetteville, Winchester, Dresden, Covington, Dyersburg, Athens, Paris,

Morristown and various other cities and counties in which it operates and does business in the State of Tennessee, and as a result of this combination it has abolished the differential heretofore maintained under and by virtue of which the independent jobbers and retail dealers have been able to carry on their business. Exercising the unlawful power to fix prices, both wholesale and retail, it has been for the last few months, and is now, selling its gasoline at tank wagon prices to retail dealers, at the same price at which it sells gasoline to the wholesale jobber, and in turn it is selling through its service stations to consumers throughout the state at retail, its gasoline at the same price it sells the gasoline at wholesale to the jobber. In other words, the jobber whose business it is to sell to the retailer, must pay to the Standard Oil Company, the fixer of prices in Tennessee, the same prices at which the purchaser from it sells to the public. It is, therefore, obvious, that the jobber must operate at a loss, because he must bear his own overhead and operating expense, and he cannot sell either at wholesale or retail and make a profit, because the Standard Oil Company is in the market, selling at retail, at the very price it sells to the jobber. In the same manner, the operator of the service station who sells at retail, must operate at a loss, because if he sells at all, he must sell at the same price at which he purchases, and bear his own overhead and operating expense. Therefore, the independent jobber and retailer must either meet the prices fixed by the Standard Oil Company, and operate at a loss, or lose all his trade and quit business. In other words, it means bankruptcy or the abandonment of his business and the absolute destruction of competition.

XVI.

It is true that the independent jobbers have a right, of course, to purchase on the open market, but the Standard Oil Company is now selling at retail in Tennessee to the consumer at the same price which the complainants and other jobbers in Tennessee must pay to any of the other defendants herein named, or any other refiner, when purchasing on the open market in car load lots or otherwise.

XVII.

The Gulf Refining Company of Louisiana, has in like manner entered into a combination with its general manager in Tennessee, and its local managers in the cities above named and in all places in Tennessee in which it does business, for the purpose of aiding the Standard Oil Company in the destruction of competition in Tennessee, and in ruin-

ing the business of the complainants and other independent dealers operating in the State.

XVIII.

And the said Gulf Refining Company of Louisiana, in like manner is now, and for several months has been selling to the service stations at the prices at which the Standard Oil Company is selling to retailers; and the Gulf Refining Company in like manner demands and will only sell to the jobber in Tennessee at the said retail prices.

XIX.

In like manner the Sinclair Oil Company has entered into a combination and conspiracy with its general manager in Tennessee and its local managers at Chattanooga and other places that it operated, as a result of which it is aiding the Standard Oil Company in maintaining its unlawful combination and its unlawful price fixing as herein set out, and is aiding and abetting the Standard Oil Company in its purpose to destroy competition in Tennessee, and in like manner is selling gasoline to the operators of service stations at the same or less price that it sells to jobbers at wholesale, or at which the Standard Oil Company and other companies are selling.

XX.

And, in like manner The Texas Company of the U. S. A., is in combination with its general manager in Tennessee, and its local agents in Chattanooga, Nashville, Memphis and other places in Tennessee, for the purpose of aiding the Standard Oil Company in fixing the prices of gasoline, and in destroying competition in this state; and it is selling its gasoline at the same prices and in the same manner as the Standard Oil Company.

XXI.

The Pan-American Petroleum and Transport Company, is in like manner operating in combination with the Standard Oil Company, and is a subsidiary. It is aiding the Standard Oil Company in its combination to destroy competition in Tennessee in the manner hereinbefore set out, and is in combination with its own managers and agents in Tennessee to carry this into effect.

XXII.

In like manner the Producers and Refiners Corporation of Tennessee, is, as stated, a subsidiary of the Standard Oil

Company, and is operating in this State only for the purpose of aiding the Standard Oil Company to carry out the unlawful combinations herein set out.

XXIII.

The purpose and effect of the unlawful practices herein set out, is not only to destroy competition, but to destroy the business of these complainants and others operating in like manner. The history of the Standard Oil Company is that when it has destroyed competition it raises its prices and the public is made to suffer accordingly and that is the ultimate purpose in this case.

XXIV.

In stating that these defendants have been selling and are selling at wholesale at the same price at which they are selling at retail, complainants would show that at times the wholesale price is a fraction less than the retail price and some times a fraction more than the retail price, because the price is fixed at the refinery, with freight and taxes added, so that the prices fixed in such manner as that, when the freight and taxes are added, it will be substantially the retail price, and as stated, it sometimes varies a fraction either way, but not materially so. The result being that the complainants and all other independent dealers in Tennessee are operating at a loss, and as a result of the illegal operations herein set out.

XXV.

The differentials between what are known as the tank car or refinery prices, the tank wagon or jobbers prices, and the retail or service station prices, has heretofore been maintained in this state, as heretofore stated, for many years and are maintained all over the United States, as the only basis at which independent dealers may operate at all under existing conditions, throughout the United States, on account of the domination of prices by the Standard Oil Company, its subsidiaries and allies.

Recently, since the unlawful purpose has developed on the part of these defendants to destroy all independent business in Tennessee all these defendants have declined to make any further marginal contracts, or to make any contracts for future delivery at all, and complainants and all other dealers must now purchase on the open market, unless, as exists in a few instances, some of the marginal contracts have not yet expired. These contracts, however, will soon

expire and even in these few instances the independent jobbers will, like the other independent jobbers, be at the mercy of these defendants. And, as stated, when buying on the open market, as the independent jobbers must do, he can only buy at the same prices at which he must sell, either to the operators of service stations or to the public, and as stated above, the independent jobbers and independent operators of service stations are now having their business destroyed by the illegal combinations herein complained of.

XXVI.

Carrying out the unlawful purpose hereinbefore set out, —to destroy competition in Tennessee in violation of the Tennessee Anti-Trust Act, these defendants, in combination between themselves, their various agents and managers, as hereinbefore set out, have been, by virtue of the said arrangement, agreement, or understanding, selling gasoline in tank wagon and retail lots at the regular Standard Oil wholesale, or tank car prices, for the purpose, as stated, of lessening or destroying competition in the gasoline business in the State of Tennessee. This they have accomplished in some instances by directly selling at retail through service stations at the wholesale tank car prices, and in some instances they have done this by indirection and subterfuge, by granting rebates, and other subterfuges, but they have all reached the same end, as hereinbefore set out, all of which is done with the evil purpose and with the evil effect hereinbefore set out.

Complainants charge that the injury to their business has been, and is continuing to be, great and irreparable, and they have no adequate remedy save in a court of equity.

XXVII.

Complainants charge that the differential, as hereinbefore described, between the tank car price and the tank wagon price, and between the tank wagon price and the service station price have been maintained all over the United States by the trade generally, and by the defendants for many years, and that such differentials are now being maintained in all parts of the United States except in the State of Tennessee, and that said differentials have been destroyed temporarily only in this state for the purpose of destroying the business of complainants and others engaged in like business.

Complainants charge that the usual and customary differential maintained in this state for many years is three (3) cents difference between the service station price and

the tank wagon price, and three (3) and four (4) cents difference between the tank wagon price and the tank car price, the latter being the price at which gasoline is sold by the refineries to the jobbers.

XXVIII.

The Mexican Petroleum Company of Louisiana is a subsidiary of the said Pan-American Petroleum & Transport Company. It operates in the State of Tennessee merely as a convenience in aid of the business of the Pan-American Petroleum & Transport Company, and is a party to, and has been, and is now engaged in aiding the said Pan-American Petroleum & Transport Company in the unlawful combination and conspiracy herein described.

PREMISES SEEN, COMPLAINANTS PRAY:

That the defendants set out in the caption be made such by the proper process of this Court, returnable to the next rule day of this Court.

Let process issue to the Sheriff of Rutherford County for the defendants Standard Oil Company of Louisiana, The Texas Company, and the Gulf Refining Company of Louisiana; and to the Sheriff of Shelby County for the defendants Pan-American Petroleum & Transport Company, the Mexican Petroleum Corporation of Louisiana, and the Producers & Refiners Corporation of Tennessee; and to the Sheriff of Hamilton County for the defendant Sinclair Refining Company. Let the defendants answer but not under oath.

Let an injunction issue restraining the defendants, each and all of them, their agents and employes, allies and subsidiaries, from continuing the unlawful practices herein set out and described.

Let said defendants, each of them, their agents, employes, subsidiaries and allies, as herein described, be enjoined from continuing the sale of gasoline, either in tank car lots, tank wagon lots, or at retail through service stations, or otherwise, without maintaining the usual customary or reasonable differential between the price at which gasoline is sold in tank car lots and in tank wagon lots, and between the price at which gasoline is sold at tank wagon lots and at retail.

Let them all be restrained from continuing the unlawful practices hereinbefore set out by way of rebates or other subterfuges.

Upon the final hearing decree that the action of these defendants as herein set out has been a violation of the anti-

trust laws of the State of Tennessee and a violation of the rights of these complainants.

Let the injunction herein prayed be made perpetual.

Grant all other, further and special relief to which the complainants may be entitled, and grant general relief.

This if the first application for a writ of injunction in this cause.

THOS. N. GREER,
J. J. LYNCH,
J. G. PHILLIPS,
Solicitors for Complainants.

STATE OF TENNESSEE,
COUNTY OF HAMILTON.

Personally appeared L. D. McKnight, President of the Consumers' Supply Company; A. H. Alexander, Vice-President, Valley Oil Company; R. P. Estes, President of the Estes-Cooper Oil Company; Mark H. Senter, President Southeastern Oil Company; J. M. Lassing, W. D. Hudson, Joseph Rosenfield, President Benzol Gas Corporation; B. E. Holdman, Secretary-Treasurer Elk Oil Company and President of the Consumers' Oil Company; H. A. Thompson, Secretary-Treasurer, Thompson Oil Company; C. M. Abeel, President, Abeel Brothers; E. E. Johnson, before the undersigned authority and made oath in due form of law that the facts stated in the foregoing bill are true when stated as of their own knowledge, and those stated upon information they verily believe to be true.

E. E. JOHNSON,
H. A. THOMPSON,
W. D. HUDSON,
R. H. ALEXANDER,
JOSEPH ROSENFIELD,
J. M. LASSING,
C. M. ABEEL,
R. P. ESTES,
AL D. MCKNIGHT,
B. E. HOLDMAN,
MARK H. SENTER.

Sworn to and subscribed before me this 2nd day of January, A.D. 1926.

CHAS. M. FAIN, *Notary Public.*

To the Clerk & Master at Murfreesboro:

Upon the execution of bond in the sum of Five Thousand Dollars ($5,000.00) conditioned as required by law issue the writ of injunction as prayed in the bill restraining the defendants from selling gasoline in the State of Tennessee

either in tank car lots, tank wagon lots, retail or otherwise without maintaining (and selling at) a reasonable, usual and customary differential as described in the bill, between the price of gasoline sold in tank car lots and tank wagon lots and that sold in tank wagon lots and at retail. And from conveying out the combination alleged in the bill by subterfuges or otherwise, directly or indirectly.

This January 4, 1926.

FLOYD ESTILL, *Judge.*

EXHIBIT No. 4.

IN THE CHANCERY COURT OF RUTHERFORD COUNTY, TENNESSEE.

CONSUMERS SUPPLY COMPANY, ET ALS, *Complainants,*
vs.
STANDARD OIL COMPANY OF LA., ET ALS, *Defendants.*
No. 1488-Q

The Separate Answer of the Standard Oil Company of Louisiana, One of the Defendants in the Above Styled Cause.

The Standard Oil Company of Louisiana, one of the defendants in the above styled cause, not waiving its right to object and except to the original bill herein, for its many errors and insufficiencies, but expressly reserving same and answering only so much and such parts of such bill as it is advised it is material and proper for it to answer, says:

I.

Respondent is not advised as to the corporate or non-corporate character of the various complainants nor is it definitely advised as to the nature and character of the

business in which they are engaged, and therefore, calls for strict proof of the allegations of the bill in those respects.

II.

Whether the nine complainants referred to in paragraph 2 of the bill as being engaged in the sale of gasoline at retail by the operation of service stations at certain places are so engaged respondent is not definitely advised and therefore, calls for strict proof of the averments of the bill in this respect.

III.

Respondent admits that it is a corporation organized and existing under the laws of the State of Louisiana but it denies that all of its stock is owned by the Standard Oil Company of New Jersey. It denies that it is "operated, dominated and controlled by the Standard Oil Company of New Jersey."

It avers and does believe that so much of the third paragraph of the bill as relates to the organization and history of the Standard Oil Company of New Jersey is not material or pertinent in this cause and denies the correctness of the statements in the third paragraph of the bill in those particulars.

It does not deny, however, that there was a proceeding which resulted in a final decree of the Supreme Court of the United States affecting the organization known as the Standard Oil Company of New Jersey, but the truth as to the nature and character of those proceedings, including the final decree therein, can only be determined from the record in that cause and therefore, respondent demands strict proof of that record.

IV.

Respondent does not deny that proceedings were instituted by the Attorney General of the State of Tennessee against the Standard Oil Company of Kentucky which resulted in a decree at the December, 1907, term of the Supreme Court of Tennessee, ousting that company from the State of Tennessee and that such decree was affirmed thereafter by the Supreme Court of the United States. Respondent, however, refers to the record in that proceeding for a correct history thereof and denies that the proceeding in that cause, or the result thereof, are of any pertinence in the present litigation. Particularly, respondent denies that it had any connection with the Standard Oil Company of Kentucky or with the matters and things involved in the so-called ouster proceeding by the State of

Tennessee. Respondent also denies that in order to meet the situation resulting from the ouster of the Standard Oil Company of Kentucky from Tennessee this respondent was organized as a corporation to take its place, the fact being as respondent now particularly avers, that it was an organization and going corporation engaged in the business of proceedings, refining, selling and distributing petroleum some time prior to the final decree in the said ouster proceeding. Respondent denies that its entry into the State of Tennessee was merely a continuance of the alleged conduct of business in Tennessee, by the Standard Oil Company of New Jersey. The fact is, that respondent's entry into Tennessee was made in the usual and ordinary course after a compliance with all of the requirements of the laws of Tennessee. The very name of the respondent indicated its business association. It purchased the physical properties in Tennessee of the Standard Oil Company of Kentucky on or about May 11, 1910, and thereafter has continued to do business in Tennessee in the handling of petroleum products all over the State. This was done with the full cognizance of every official in Tennessee and without objection from any source. It was done after full compliance with the laws of Tennessee.

V.

Respondent is advised that the averments of this paragraph with respect to the proceedings which eventuated in a final decree of the Supreme Court of the United States, which proceedings were aimed at the Standard Oil Company of New Jersey, and charged violation of the anti-trust laws of the United States, are not material in the present litigation. Whether material or not, the truth as to the nature and character of those proceedings and the ultimate result thereof can only be properly known from an examination of the record therein and if the matter is material, respondent insists upon a strict and proper proof thereof.

It is not true, however, and respondent particularly denies that "no two Standard Oil Companies in the United States now occupy the same territory or compete with each other." It is enough in this connection for respondent to point to the bill itself in which it is averred, that the Standard Oil Company of Indiana dominates and controls a company known as the Pan-American Company, which is an active competitor of respondent in the State of Tennessee.

Respondent further says, with respect to the charges in paragraph V of the bill, that proceedings are now pending before the Federal Trade Commission against the Stand-

ard Oil Company of New Jersey to the effect that it is violating the laws of the United States and attempting to monopolize the oil industry, in which proceedings it is alleged that this respondent is operated as a subsidiary by said New Jersey corporation; respondent denies the materiality of those charges in this cause, and says that whether material or not, the only proper proof in the matter is the record of that proceeding and therefore, demands strict proof of the allegations of the bill in this respect. This respondent, however, further denies that it is in any respect engaged in an unlawful business or in an unlawful way in Tennessee but on the contrary, insists and avers that it is observing every requirement of the laws of Tennessee.

VI.

With respect to this paragraph of the bill, which refers to the Pan-American Petroleum and Transport Company, respondent says that it has no concern with these allegations and leaves the corporation, therein referred to, to make its own answer. Respondent, however, here avers that there is a corporation operating very widely in Tennessee, in petroleum products business, handling what is known as the Pan American Petroleum Products and that said corporation is an active and emphatic competitor of this respondent in the sale of petroleum products in Tennessee. With said corporation this respondent had no alliance or connection whatever, the two companies being as separate and unallied as two companies could be.

VII.

This paragraph relates to the Gulf Refining Company of Louisiana, a co-defendant herein, and respondent leaves it to that company to make its own answer.

Respondent, however, states that the Gulf Refining Company of Louisiana deals very largely in Tennessee in petroleum products and that it is probably the largest competitor of this respondent in Tennessee. The competition between said Gulf Refining Company and this respondent is keen and there is no connection or alliance between them in any respect nor has there ever been.

VIII.

With respect to this paragraph of the bill, which refers to the Texas Company of the U. S. A., respondent merely says that it is true that said Texas Company owns and operates large refineries in Texas and perhaps in other States,

and that it is a large dealer in gasoline and other petroleum products in Tennessee. It is an active competitor of this respondent and there exists no alliance or confederation of any sort between said Texas Company and this respondent, nor has such alliance or confederation ever existed. On the contrary, they are now and have been, keen and active competitors in the markets of Tennessee and elsewhere.

IX.

With respect to this paragraph which refers to the Sinclair Refining Company, this respondent merely says that so far as it is affected by such allegation, if at all, it demands strict proof. However, respondent particularly and emphatically denies that said Sinclair Refining Company is "operated in entire harmony with" this respondent and emphatically denies that same is operated as a subsidiary of this respondent.

X.

With respect to this paragraph which refers to Producers and Refiners Corporation, respondent says that so far as it is affected by same it demands strict proof of the allegations of the bill. Respondent denies emphatically that said Producers and Refiners Corporation is under its domination or control, in any respect. The fact is, that to the extent of its limited operations the said Producers and Refiners Corporation is a competitor of this respondent.

XI.

Respondent denies all and singular the allegations of this paragraph. It is not true in any respect that "the said Standard Oil Company in combination are able to and do dominate and fix wholesale and retail prices of gasoline throughout the United States, and especially in the State of Tennessee and surrounding territory."

This respondent further says that it does not dominate, control or fix, or attempt to do so, the wholesale or retail price of gasoline or any other petroleum products in Tennessee or elsewhere, but seeks merely, as it has always sought, to engage in the business of handling petroleum products in Tennessee, in strict accordance with the laws of Tennessee and the Federal Government.

XIII.

With respect to the charges in this paragraph, respondent says that it has never engaged in the practice of mak-

ing marginal contracts, or what is known as guaranteed profit sales. For the information of the Court, it may here be stated that the term "marginal contract" is generally used to indicate the contract between the refiner and the jobber, and the term "guaranteed profits contract" is a term used to indicate the contract between the jobber and the dealer,—by word "dealer" being meant the person who sells at retail. These marginal contracts, so far as respondent is informed, generally provide for a price to be fixed as of the time and place of delivery. It may be true, and probably is, that a number of these marginal contracts have been made by other companies engaged in the petroleum business in competition with respondent, in which the tank wagon price of this respondent has been taken as a standard or basis but that was for the convenience, and at the choice of the parties to such contracts, and this respondent had nothing whatever to do with it.

In so far as this paragraph XIII indicates that there are three prices, to-wit, the wholesale price to the jobber called the "tank-car price," the jobber's price to the dealer, which is known as the "tank wagon" price, and the dealer's price to the consumer, which is known as the "service station price," the bill is about correct.

Respondent particularly denies the last section of paragraph XIII of the bill in which it is averred that the defendants hereto other than respondent, and other refiners are colluding with, or aiding or helping, this respondent in any attempt to fix prices. As heretofore stated, and as will be hereinafter repeated, this respondent has never undertaken to fix the price of any petroleum products, except the price at which it sells to its own customers.

Whether the prices heretofore prevailing have been such as to enable independent dealers to carry on their business, is a matter as to which this respondent is not advised, except that it is advised that that is an immaterial matter.

XIV.

With respect to this paragraph respondent neither denies nor affirms the charges therein made.

XV.

With respect to this paragraph, in so far as it charges that all of the defendants hereto are not only refiners and doing business of refining and selling in tank car lots, but have also entered the field as jobbers, and that this respondent, the Pan-American Petroleum & Transport Company, The Gulf Refining Company of Louisiana, and the

Producers Refining Corporation of Tennessee have begun operating service stations and selling at retail, respondent says that this is probably true, within the limitations hereinafter more fully set out. However, this respondent does not desire to bind its co-defendants, and leaves it to them to make their own answer in this respect.

Respondent, however, denies emphatically that this respondent has engaged in any effort to lessen or destroy competition in Tennessee, of any kind, and it has not undertaken to destroy competition that comes from the independent local dealers throughout the State.

Respondent particularly denies that it is engaged in the "unlawful combinations and agreements hereinafter set out," either in the particulars thereinafter set out in the bill, or otherwise.

Respondent here reiterates that it is not in any combination with the Standard Oil Company of Kentucky, or any other corporation, to keep out competition in Tennessee, and denies that it has been a party to any arrangement whereby there has been allotted and divided among any companies, or set of companies, the territory in the United States.

In so far as said paragraph charges that this respondent has recently combined with its general manager in the City of Memphis, and its local managers in certain other cities, as a result of which combination there has been abolished the differential alleged heretofore to have been maintained, respondent denies again, all and singular, the charges and suggestions that it is engaged, or attempting to engage, in any effort to fix the prices of gasoline, other than the prices of its own products, to its own customers.

In this connection, respondent would further say that there has long existed the practice of selling to a class known as commercial consumers at what are called tank wagon prices, and under this practice, respondent sends its tank wagon to the place of business of the commercial consumer, and places in his tank as much gasoline as the consumer desires to purchase at the tank wagon price. To this practice no objection was ever heard from any source. Recently, however, for business considerations which appeared to respondent to be sound, respondent has indicated to its commercial consumers its willingness to sell gasoline to them at, and make delivery through, its service stations, when they come to respondent's service stations and apply therefor at tank wagon prices. Respondent then believed, and now believes, and avers, that such change in practice was merely a change in the method of delivery, and was justified by business principles of long recognition and

admitted soundness. In order that said practice might be protected from abuse, respondent has invariably required that such commercial consumer who purchases through a service station should not pay for his purchase in cash, but the amount of said purchase should be charged to the commercial consumer and a ticket issued showing the person at whose instance the purchase was made. Monthly bills were accordingly rendered to the commercial consumer reflecting such purchases. Respondent is advised and believes that, in so doing it was acting entirely within its rights, and was pursuing correct business principles.

With the view to further protecting this change of practice from abuse, all of respondent's officers and employes have been instructed to confine this tank wagon price at service stations to legitimate commercial consumers.

Respondent would further point out that it has been a usage of trade from time immemorial to sell to quantity consumers at lower rates than to small consumers, and its granting the tank wagon rate to commercial consumers was but an application of that usage.

However, respondent does not mean by thus defending its course, in selling to commercial consumers at tank wagon prices at service stations prices, to concede that it is bound to limit its tank wagon prices to commercial consumers. On the contrary, respondent is advised and believes that it is entitled to sell its products at any price it sees fit, so long as it violates no law of the State or Federal Government.

XVI.

With respect to the allegations of this paragraph, respondent is advised and believes that they are of no pertinence in this cause. However, respondent denies the allegations of this paragraph, and calls for strict proof thereof.

XVII.

In respect to this paragraph, which makes a charge against respondent's co-defendant, the Gulf Refining Company of Louisiana, respondent makes no answer, but leaves the Gulf Refining Company of Louisiana to speak for itself. However, respondent again denies the suggestion in this paragraph that it is in collusion with said Gulf Refining Company. On the contrary, it is in open and active competition with said company.

XVIII.

This paragraph also refers to the Gulf Refining Company of Louisiana, and respondent leaves it to that company to make its own answer.

XIX.

This paragraph refers to the Sinclair Oil Company, and this respondent leaves to that company what answer shall be made. However, respondent particularly denies that the Sinclair Oil Company is aiding or abetting it in any respect whatever, and again avers that it has no relation or understanding with said Sinclair Oil Company of any kind, but on the contrary, is in active and open competition with it. Respondent does not own or in any way control, directly or indirectly, said Sinclair Oil Company.

XX.

This paragraph refers to the Texas Company of the U. S. A., which will speak for itself. However, respondent denies again that it is in any way related to said Texas Company, or that it is in collusion or combination with it for any purpose whatever, and respondent particularly denies that it is collaborating or acting with the Texas Company in any respect with a view to destroying competition in Tennessee or elsewhere.

XXI.

This paragraph refers to the Pan-American Petroleum & Transport Company, and that company will answer for itself, but respondent emphatically denies that said company is acting in combination with it, and especially denies that it is a subsidiary of respondent.

Respondent does not know the extent to which the Pan-American Petroleum & Transport Company is engaged in business in Tennessee, but is advised and believes that it does not do business in Tennessee. There is, however, a corporation known as the Pan-American Company, or a company having some similar name, with which this respondent has no connection whatever, but it is operating in Tennessee in keen and active competition with this respondent.

XXII.

This paragraph refers to the Producers & Refiners Corporation of Tennessee, which will answer for itself. Respondent denies that it is a subsidiary of respondent, and particularly denies the charge of the bill that said company is operating in this State "only for the purpose of aiding the Standard Oil Company to carry out the unlawful combinations herein set out."

XXIII.

This paragraph undertakes to say that "The purpose and effect of the unlawful practices herein set out is not only to destroy competition, but to destroy the business of these complainants and others operating in like manner."

Respondent denies that there are any such unlawful practices as have been averred, and denies any effort on its part to destroy competition. Respondent is advised that it is immaterial to this cause, what has been the history of the Standard Oil Company heretofore, and denies again.

XXIV.

Respondent denies the allegations in this paragraph except the allegation to the effect that the complainants and other independent dealers in Tennessee are operating at a loss. As to what the facts are in this respect, respondent is not advised.

XXV.

With respect to the averments of this pargraph, respondent says that it may be true that differentials between tank car prices, tank wagon prices, and service station prices, have existed. Exactly the same condition exists in every other line of trade, the wholesaler selling at one price, the jobber at another, and the retailer at a third; but so far as respondent is advised, there has never been any law, either of morals or by statute, or otherwise, which prohibits the owner of the product from selling it at any price that he may see fit, provided he violates no law of the State or Federal Government, and, as heretofore stated, respondent has never engaged in the practice of selling on marginal contracts, and to what extent its co-defendants have been engaged in that practice, respondent is not definitely advised, nor is it definitely advised as to whether they have discontinued the practice of selling on marginal contracts. However, as already indicated, respondent is in open and active competition with its co-defendants, and if they have abandoned the practice of selling on marginal contracts, that was something with which respondent had nothing whatever to do, and their abandonment, if such abandonment has occurred, of selling on marginal contract, was wholly without influence or suggestion from this respondent.

Respondent will call attention to the fact, which will be elaborated hereinafter, and it is indicated in this paragraph, that these complainants have an open market in which they may purchase, and that open market is not under the control and dominion, in any respect whatever, directly or indirectly, of this respondent.

It may be here stated as a fact, and it is a fact, that this respondent has rarely sold its petroleum products to these complainants. There may have been a rare instance here and there in which one or more of the complainants have purchased from one of respondent's tank wagons, but complainants have never in any respect been dependent on respondent for their source of supply, and have only purchased from respondent in the rare instances mentioned for the purpose of convenience to themselves in cases of emergency.

XXVI.

Respondent denies the allegations of this paragraph. These allegations have been substantially denied already in this answer. Respondent particularly desires to deny, however, the charge that "by indirection and subterfuge, by granting rebates and other subterfuges" respondent has "undertaken to affect injuriously the business of complainants." Respondent denies that it has, by any unlawful means, whatever, directly or indirectly injured the business of complainant.

XXVII.

With respect to this paragraph, respondent says that it may be true that, as a general rule, differentials have existed between tank car prices, tank wagon prices, and service station prices, over the United States, but it denies that there is any law of trade, or law of the State, or of the nation, which compels the observance of such differentials. On the contrary, it has been a usage of trade of indefinite duration, under which a party having goods for sale may sell them at any price he sees fit, so long as he violates no law of the country.

XXVIII.

This paragraph refers to the Mexican Petroleum Company, of Louisiana, and that Company will answer for itself. Whether it is a subsidiary of the Pan-American Petroleum & Transport Company, respondent, is not advised, but respondent again says that it sustains no relation with said Company, and is in no agreement or combination with it of any sort, but, on the contrary, it is in open and active competition with it in other sections. It does not operate in Tennessee.

XXIX.

And, now having answered in detail, paragraph by paragraph, the averments of the bill, respondent would further say:

As already indicated, respondent was organized as a corporation under the laws of the State of Louisiana sometime prior to the final decree of the Supreme Court of the United States in the case of State of Tennessee vs. Standard Oil Company of Kentucky, that case being the ouster case hereinabove mentioned, and at the time said final decree was rendered, this respondent was actively engaged in the production and distribution of petroleum products. On or about May 11, 1910, it purchased the physical properties in Tennessee of the Standard Oil Company of Kentucky, applied to the State of Tennessee for permission to enter business in Tennessee, and complied with all the laws of the State of Tennessee thereunto requisite. From time on, this respondent has been engaged in Tennessee in the business of selling and distributing petroleum products, and complied with every law of Tennessee applying to it. No objection or protest against its conduct was made by any official of the State of Tennessee, nor from any other source, until this complaint of these complainants, during all of the time mentioned it was operated as a corporate entirely under the control and direction of its officers, and in an open, legitimate and proper way. It has entered into no combination, agreement or understanding with any of its co-defendants, with a view to fixing or controlling the prices of petroleum products in Tennessee, or with a view to obstruction of competition in Tennessee, but, on the contrary, has pursued its own course without consultation, conference, agreement, or understanding with any of its co-defendants, or with any other corporation.

The so-called allotment of territory referred to in the bill as existing among the Companies bearing the name of Standard Oil was not based upon any agreement or understanding among the several companies, but was the natural and inevitable result of the laws of trade. Each of the companies was so situated with respect to the refining plants as to serve its contiguous territory to the best economic advantage, transportation and other marketing factors. It is not a fact that, when the Standard Oil Company of Louisiana entered the State of Tennessee to transact business, there was any arrangement, combination or understanding between it and any other Standard Oil Company under or by which any other Standard Oil Company was not to compete with the Standard Oil Company of Louisiana in the State of Tennessee, or under or by which the territory of the United States was divided among the Standard Oil Companies so as not only to avoid, but to prevent competition among them. It is not a fact that any such arrangement, combination or understanding has been made, or continued,

or has ever been in existence. The relations between these respondents and other Standard Oil Companies, whose stocks were distributed in 1911, pursuant to a decision of the Federal Supreme Court, were finally terminated by such distribution. The several marketing companies were authorized, became, and have remained separate autonomous corporations. This respondent maintains local marketing and distributing facilities in the State of Louisiana, Arkansas and Tennessee. To the extent that the Standard Oil Company of Indiana and the other Standard Oil Companies whose stocks were distributed in 1911, under the Federal decree referred to, do not maintain local marketing facilities in the State of Tennessee, and the other states named, this is not due to any agreement or understanding to which this respondent, or the Standard Oil Company of New Jersey, is a party, but solely to the independent exercise of the business judgment of their several boards of directors. The fact is, that in all branches of the business, other than the distribution of gasoline and kerosene through local sales stations, the Standard Oil Company of New Jersey and this respondent, on the one side, and the former subsidiaries of the Standard Oil Company of New Jersey, on the other, do a wholesale business to all points which freight rates will permit them to reach, and, in so doing, they come into active competition with one another.

It is a fact, furthermore, that the Pan-American Company (the exact name of which, respondent is advised, is Pan-American Petroleum Corporation), which is controlled, as respondent is now advised, by the Standard Oil Company of Indiana, is installing and operating local marketing stations in Tennessee, and is in direct competition with this respondent.

This charge of an illegal division of territory is not a new one, but has been made from time to time ever since 1911. It has been made the subject of exhaustive investigation on several occasions by the Federal Trade Commission, the Federal Department of Justice and the Attorneys General of several States. No proof sustaining the charge has ever been obtained, and it never can be obtained, because no such agreement or understanding, express or implied, ever has existed, or ever will be made—at least, so far as this respondent and the Standard Oil Company of New Jersey are concerned.

Respondent makes no concealment of the fact that all of its capital stock, except certain qualifying shares, are owned and held by the Standard Oil Company of New Jersey, but it avers again that it is operating and has always operated, as an independent corporate entirely under the manage-

ment and control of its own separate officers, and there has been no effort on its part, or on the part of the Standard Oil Company of New Jersey to control or fix prices, or destroy competition.

In this connection, reference may again be made to the charge made in paragraph V of the bill to the effect that proceedings are now pending before the Federal Trade Commission against the Standard Oil Company of New Jersey. The facts in that connection are that this proceeding has been pending for something like three years. Certainly there has been no finding of any sort that the Standard Oil Company of New Jersey or this respondent, has been guilty of any wrong-doing. That proceeding is not a prosecution, in any sense, of the Standard Oil Company of New Jersey, or of this respondent, but is a mere investigation by the Federal Trade Commission.

XXX.

Respondent here further says, in support of its statement that it does not fix, and has not attempted to fix, prices in Tennessee, that it publishes no price list, other than a card at each service station indicating the prevailing price at that station. There are a number of oil trade journals circulated in Tennessee, such as the "Daily Oil News Report," "Oildom," "Platt's Oilgram," which are issued simultaneously from Teuls, Oklahoma, Chicago, Illinois, and Cleveland, Ohio, daily giving the changes in the petroleum markets. There are other similar trade journals issued weekly which deal with prices, the marketing and production conditions and other information of interest to the petroleum industry, but this respondent has no connection whatever, with any of those publications.

In only a limited number of instances has the tank wagon price of respondent been taken as a basis for the price fixed by independent jobbers and refiners, and even in those cases, respondent had nothing whatever to do with the use by such jobbers or refiners of its wagon prices, as a standard. The principal, but not by any means the sole source, of supply for independent jobbers in Tennessee is what is known as the Mid-Continent field, embracing a large number of oil refiners in Oklahoma and North Texas, in which respondent has no interest. The prices charged by these refiners are subject to constant changes, varying not only from day to day, but sometimes during the hours of the same day, and are governed by considerations with which respondent has nothing to do. The prices charged by such refiners to independent jobbers, and the jobbers to the dealers in Ten-

nessee on contracts for future deliveries, and on other contracts, are controlled mainly by the market conditions in the Mid-Continent field above referred to, and by the law of supply and demand.

It may be true that, in some instances, independent jobbers and refiners have taken respondent's tank wagon prices for a basis of their prices on contracts for future deliveries, but in every one of those instances, respondent's tank wagon prices are taken as a basis merely because the independent refiner or jobber chooses to select them, and not because of any relation of respondent to the situation.

Respondent is engaged in the business of selling and distributing petroleum products in Tennessee in keen competition with a number of companies, chief among which may be mentioned the Gulf Refining Company, the Texas Company, the Pan-American Petroleum Corporation (controlled, respondent is advised, by the Standard Oil Company of Indiana), the National Refining Company and others. With none of those Companies does respondent maintain any connection whatever, nor has it nor has it ever had, any understanding or arrangement between it and them.

It is of importance in this connection that respondent indicate the extent to which competition has affected its business in Tennessee, and respondent now avers that, using round numbers, it handled in 1921, sixty-two per cent of the gasoline sold in Tennessee. On the basis of its experience for the past three months, it has handled only thirty-five per cent. This percentage of thirty-five per cent would be much less, but for the fact that respondent operates wagon routes in the rural districts which its competitors have not generally done.

It may be important to call to the Court's attention the fact that the operation of these wagon routes by this respondent means that the farmer and small user in the country has delivery at his door at tank wagon prices, and that the price to him is not raised, notwithstanding there is little or no competition for his trade.

Of the total consumption of gasoline in Tennessee, approximately fifty-five per cent occurs in the four cities of Memphis, Nashville, Knoxville and Chattanooga. In those cities respondent's tank wagon business and service station business is indicated by the following statement:

Exhibit No. 4 to Motion to Dismiss and Answer

STATEMENT SHOWING ESTIMATED DAILY CONSUMPTION OF GASOLINE AND AMOUNT OF BUSINESS HANDLED BY STANDARD OIL COMPANY OF LOUISIANA THROUGH SERVICE STATIONS AND TANK WAGONS AT POINTS SHOWN BELOW, FOR THREE MONTHS' PERIOD ENDING OCTOBER 31ST, 1925

STATION	Estimated Daily Consumption Bbl. 50 gal. each	Average Sales Per day Bbls. 50 gal. each	Pct.
	TANK WAGON SALES		
Memphis	1,500	51	.034
Nashville	1,200	39	.032
Knoxville	1,000	100	.10
Chattanooga	1,000	58	.058
	SERVICE STATION SALES		
Memphis	1,500	220	.146
Nashville	1,200	146	.122
Knoxville	1,000	97	.097
Chattanooga	1,000	97	.097
	TOTAL T. W. AND S. S. SALES		
Memphis	1,500	271	.180
Nashville	1,200	185	.154
Knoxville	1,000	197	.197
Chattanooga	1,000	155	.155

Respondent further says that, in its service stations in Tennessee, it undertakes to render the best service possible, and to furnish the best petroleum products obtainable; that in its tank wagon service it undertakes to do the same. In proportion to the amount of business, it believes it has larger and better facilities for serving the public than any of its competitors.

There are a very large number of corporations and individuals in Tennessee who are engaged in the business of selling gasoline to the public, and the complainants to this suit represent comparatively a small percentage of that number. Complainants do only a small proportion of the business of serving the public from filling stations. There is a very large number of persons who are operating one or more filling stations in Tennessee, who are not parties to this suit.

Respondent is very seriously injured by the enforcement of the temporary injunction issued in this cause. It interferes seriously with respondent's business, and causes great confusion. Respondent maintains a great many places of

business in Tennessee, operating in practically every county in Tennessee, for example, it has in Memphis 40 service stations, 24 in Nashville, and corresponding numbers in Chattanooga and Knoxville. It would readily appear from the amount of business done by respondent as already indicated, that an interference with its price must necessarily cause a large loss each day, to which respondent ought not to be subjected.

CONCLUSION.

And now, having fully answered, respondent again avers that it has not undertaken, by combination with its co-defendants, nor in any other way, to fix or control prices in the State of Tennessee, nor to suppress competition, and that it has in all respects observed to the letter the laws of the State of Tennessee, and of the Federal Government, and has merely endeavored to do business to the full enjoyment of its rights. Wherefore, respondent prays that the temporary injunction heretofore issued in this cause, be dissolved, and that respondent be hence dismissed with all costs in this behalf most unjustly sustained.

Wherefore, etc.

(Signed) H. D. MINOR,
CHAS. N. BURCH,
A. A. MORENO,
Solicitors for Respondent.

STATE OF TENNESSEE, }
COUNTY OF SHELBY. } ss.

C. O. Scholder, Thomas H. Taylor and C. L. Williss, having been duly sworn, make oath and say, that C. O. Scholder is now, and has been for more than six years last past, Vice-President of the Standard Oil Company of Louisiana, in charge of sales, with offices at the head office of said company in New Orleans, Louisiana, and as such is the active head of the sales department; that Thomas H. Taylor is now, and has been for more than ten years last past, sales manager of said company, with offices at the main office of said company in New Orleans, Louisiana; that C. L. Williss is now, and has been since January 1, 1926, manager of said company for Arkansas and Tennessee, and during the preceding year was acting manager for said states, and that for more than ten years preceding that time was assistant manager for said company for said states; that, in the capacities above mentioned, the said affiants have served the said company to the exclusion of all other business, and have been in close and constant touch with its sales business in Tennessee, and necessarily with the matter of prices.

Exhibit No. 4 to Motion to Dismiss and Answer
Exhibit No. 5 to Motion to Dismiss and Answer

Affiants have carefully read the foregoing answer, in preparing which they had an active part, and state that they are familiar with the facts stated in said answer, and that all and singular the statements made in said answer are true in substance and in fact.

(Signed) C. O. SCHOLDER,
THOMAS T. TAYLOR,
C. L. WILLISS.

Subscribed and sworn to before me, this the 8th day of January, 1926.

MORA B. FARRIS,
Clerk and Master.

(Filed January 8, 1926, James R. Jetton, C. & M., by B. S. Oldham, D. C. & M.)

Exhibit No. 5.

CONSUMERS SUPPLY COMPANY ET ALS.
VERSUS
STANDARD OIL COMPANY ET ALS.
} No. 1488-Q.

In the Chancery Court at Murfreesboro, Tenn.

DECREE.

Be it remembered that the above entitled cause came on to be heard on motion of the defendants, Standard Oil Company of Louisiana, and The Gulf Refining Company of Louisiana, to dissolve the injunction herein granted on January 4, 1926, on the bill and answers thereto filed, at Columbia, Tennessee, upon notice to counsel for complainants. After argument by the respective counsel, the cause was taken under advisement, and after a full consideration thereof the Court is of the opinion, and so orders, that said motion is not well taken, and the same is accordingly overruled and denied, and it is ordered that the temporary injunction

heretofore granted in this cause will stand until further orders of this Court.

To all of which the said respective defendants here and now except.

The Clerk and Master will enter this order on his current minutes. Memo. opinion is filed herewith.

Signed at Columbia, Tennessee, this January 25, 1926.

(Signed) THOS. B. LYTLE,
Chancellor.

A true copy attest:
M. B. FARRIS,
Clerk and Master, Maury County, Tennessee.

CONSUMERS SUPPLY COMPANY ET ALS.
VERSUS
STANDARD OIL COMPANY OF LOUISIANA ET ALS. } No. 1488-Q.

In the Chancery Court at Murfreesboro, Tenn.

MEMORANDUM.

The original bill in this cause was filed purposely to prevent the various defendants from continuing and carrying on the unlawful practice in the conduct of their business, as fully set out and described therein.

Upon these allegations, the following fiat was issued by Judge Estill of Chattanooga, Tennessee:

"*To the Clerk and Master at Murfreesboro, Tenn.:*

Upon execution of bond in the sum of Five Thousand ($5,000.00) Dollars, conditioned as required by law, issue the writ of injunction as prayed in the bill, restraining the defendants from selling gasoline in the State of Tennessee, either in tank car lots, tank wagon lots, retail, or otherwise, without (selling at) the reasonable, usual and customary differential as described in the bill between the price of gasoline sold in tank car load lots and tank wagon lots, and that sold in tank

wagon lots and at retail, and from carrying out the combination alleged in the bill by subterfuge, or otherwise, directly or indirectly.

This January 4, 1926, at 9:00 o'clock A.M.

(Signed) FLOYD ESTILL, *Judge*."

On January 8, 1926, the defendant, Standard Oil Company of Louisiana, filed its answer, and on the same date the defendant, The Gulf Refining Company of Louisiana, filed its answer.

On the 6th day of January, 1926, counsel for complainants were given the following notice by wire:

> "On behalf of the Standard Oil Company of Louisiana, will present Chancellor Lytle on Friday morning, January 8, at eleven o'clock, at the Court House, Columbia, Tennessee, motion to dissolve injunction issued by Judge Estill in cause of the Valley Oil Company et al. v. Standard Oil Company et al. Please take notice accordingly."

On the 8th day of January, 1926, at the time designated in said notice, the respective counsel for complainants, and the two defendants, The Standard Oil Company of Louisiana and the Gulf Refining Company of Louisiana, appeared at Columbia, Tennessee, and asked that said injunction be dissolved, on bill and respective answers filed thereto.

In support of the allegations of the bill many affidavits were filed, and in justification of the matters set out in the answers, also many affidavits were filed.

After argument of counsel representing the respective parties the matters involved in the said motion were by the Court taken under advisement.

In order to fully grasp the merits caused by said motion, it becomes necessary to tersely state the real allegations of the bill, upon which they predicate their cause of action, and also the respective contentions of the said defendants, who, together with the other defendants, caused said alleged complaint.

The bill first recites the history of the Standard Oil Company of New Jersey, together with its subsidiaries, and they charge that there is a combination, confederation and trust brought about, organized, and maintained by and through the defendant Standard Oil Company, together with the other defendants, to destroy competition in the sale and merchandise of petroleum products in the State of Tennessee. It is further alleged that the defendants are wholesale dealers in gasoline, with their places of business at the respective places designated, and also operators of service stations through which gasoline is sold directly to the con-

sumer, and that some few months prior to the filing of the bill herein the defendants and complainants were selling gasoline on what is known as, or termed, marginal contracts, and that the moving factor of the defendants (Standard Oil Company) had used this practice in all the states in which it did business until some time in August, 1925, and in this State it and its subsidiaries ceased to do business under this method except wherein the contracts had not expired, and adopted the practice of selling gasoline in the State to the jobber and the consumer at wholesale prices, and that this was done for the purpose of destroying the complainants, who are independent dealers in their business and trade, and thereby accomplishing this, a monopoly was created, the result of which fixed wholesale and retail prices of gasoline in its use in the State of Tennessee, and thereby wholly destroying all competition in this business.

It is further alleged that the moving spirit of the defendants (Standard Oil Company), together with its subsidiaries and confederates, are not only engaged as sellers of gasoline in the State of Tennessee, but are engaged in the business of wholesalers and retailers, and have established service stations at various places alleged and are selling their gasoline to the consumer at the same price that gasoline can be purchased by the wholesaler. It is further alleged that the conduct and the carrying on of the said business of the said defendants is in utter disregard of the Anti-Trust Statute of the State of Tennessee, enacted into a law in 1903, which is as follows:

> "SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, and it is hereby enacted by the authority of the same, that from and after the passage of this act, all arrangements, contracts, agreements, trusts, or combinations between persons or corporations, made with a view to lessen or which tend to lessen full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend to advance, reduce, or control the price or the cost to the producer, or the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void."

It is further alleged that the said defendant, Standard Oil Company of Louisiana, which, it is charged, is dominated by the parent corporation, Standard Oil Company of New Jersey, has control of the various other Standard Oil

Companies of other states, and that its subsidiaries, for the purpose of preventing competition from other companies, and especially the complainants named herein, from doing business therein, and especially in the State of Tennessee, have allotted and divided among themselves the territory of the United States, in order to more perfectly carry out their plan and purpose, domination and control of the gasoline business in the United States.

It is further alleged that by reason of said plan of operation in the State of Tennessee, by the defendant companies, the business of the complainants herein is practically destroyed, and they hereby will suffer irreparable loss. To these respective allegations the defendant, Standard Oil Company, seriatim has interposed in its answer a denial, and in its justification of its conduct of its business in the State of Tennessee, and as an excuse therefor, states:

> "In this connection, respondent would further say that there has long existed the practice of selling to a class known as commercial consumers at what are called tank wagon prices, and under this practice respondent sends its tank wagon to the place of business of the commercial consumer, and places in his tank as much gasoline as the consumer desires to purchase at the tank wagon price. To this practice no objection was ever heard from any source. Recently, however, for business considerations which appeared to respondents to be sound, respondent has indicated to its commercial consumers its willingness to sell gasoline to them at, and make delivery through, its service stations, when they come to respondent's service stations and apply therefor at tank wagon prices. Respondent then believed, and now believes and avers, that such change in practice was merely a change in the method of delivery and was justified by business principles of long recognition and admitted soundness. In order that said practice might be protected from abuse, respondent has invariably required such commercial consumer who purchases through a service station should not pay for his purchase in cash, but the amount of said purchase should be charged to the commercial consumer, and a ticket issued showing the person at whose instance the purchase was made. Monthly bills were accordingly rendered to the commercial consumer, reflecting such purchases. Respondent is advised and believes that, in so doing, it was acting entirely within its rights, and was pursuing correct business principles."

It is insisted, "that while it may be true that the practice of differentials did obtain between tank car prices, tank

wagon prices, and service station prices, the same condition of affairs also exists in every other line of trade, the wholesaler sells at one price, the jobber at another, and the retailer at a third, but in so far as respondent is advised there has never been any law, either of morals or by statute, or otherwise, which prohibits the owner of a product from selling it at any price he may see fit, provided he violates no law of the State or Federal Government."

The answer of the Gulf Refining Company of Louisiana to the said allegations of the bill denies that in so far as it is concerned that it is any party to said combination, or agreement, or trust, and states that the wholesale and retail price of gasoline was primarily fixed by conditions of market, quantity of output, freight, and other elements that generally enter into the price of all commodities, and in further explanation of their conduct in carrying on their business in the State of Tennessee, answering, it says:

> "It is true that recently respondent has been selling gasoline through its service stations to purchasers in quantity at tank wagon prices on charge account. Other companies had been engaged in this practice for some time, and as respondent is advised, some of the complainants have been engaged in this practice. It was a condition of the trade in Tennessee that had to be met by respondent if it was to hold its custom, and it was a practice that, so far as respondent could see, was legitimate and necessary in order to meet competition and to serve its trade on equal basis with other companies."

Suffice it to say that for the purpose of disposing of said motion to dissolve said injunction, the various issues set forth will anwer. Under the various authorities having to do with the complaints of similar, or like kind, it is manifest that where in any case it is shown there is a tendency to prevent legitimate competition whether this exists in raising the price of a commodity or lowering the price of a commodity, such conduct tends to accomplish this result, and under the common law, as well as by statute, such practice is prohibited.

And it is of no effect whether this practice lowers or raises the price of the product to the consumer, the essence of the holdings being to ascertain the intention of those carrying on such practice, and when found in the complaints arising in the various causes, that such was the intention and the purpose of those bringing about such practice, then the courts of the country will declare such illegal and contrary to the welfare of any commonwealth.

In the instant case it is manifest from the allegations of the bill and the answers thereto, in so far as the defendants,

Standard Oil Company and the Gulf Refining Company, are concerned, that there has obtained in Tennessee, prior to August, 1925, a practice whereby refineries sold to the jobber at a certain price, presumably making a profit on his product, and the jobber to the retailer, presumably making a profit and the retailer to the consumer, presumably making a profit on said product, and, as stated, this obtained until the practice was changed, so that now in the sale of petroleum products in the State of Tennessee, the consumer obtains the product at the exact price that the refineries originally sold said product to the jobber, and, of course, under this practice (the price remaining the same), the consumer now must necessarily secure his gasoline at a lower price than he formerly secured same, and it is further patent that if the original seller, under the old practice obtaining prior to August, 1925, is still doing business in the State of Tennessee, now secures for the same product, the same price formerly secured, and if, as alleged, these defendants were doing business in Tennessee under said practice, obtaining prior to August, 1925, and since then has inaugurated the practice alleged, as jobbers and service station operators, there is necessarily incurred the cost and expense in the operation of tank wagons, and salaries of employes, and the expenses incident thereto. Of course, that detracts from their original price in their sales, under the practice obtaining prior to August, 1925, and if they were heretofore in their sale of gasoline to the jobber making a legitimate profit on their product, it must necessarily follow that they are now getting a much less profit by reason of their recent practice inaugurated in the State of Tennessee, whereby the consumer obtains his gasoline at the same price that the wholesalers or jobbers can obtain it.

This, of course, would not only have a tendency to wholly destroy competition, but would in fact destroy competition, and in so far as complainants are concerned, it would be a physical impossibility to operate at all except at a loss. The purpose of this new plan of operation is in no way explainable, except in the respective answers referred to of these defendants and subsidiaries who have fallen into the use of such plan, the practice comes wholly within the allegations of the bill in such combination, either expressly or impliedly, and, therefore, such practices are in utter disregard, and positively destructive of the rights of these complainants.

So it must be concluded that the allegations of the bill, if sustained, will make out a case warranting the temporary injunction in this cause, measured by the many cases of the various states in the Union, together with those of our own

Court. It is apparent to all that each case must stand on its own peculiar surroundings, and no other, and upon a full investigation on the merits. It is contended that the practice obtaining destroys, or tends to destroy, competition; with said practice obtaining not only has the Anti-Trust laws been abrogated, but the common law on the same question has also been abrogated.

Considering the resultant damage or injury that may follow the dissolution of said injunction, or its preservation, it is obvious that complainants cannot do business in the State of Tennessee with the injunction dissolved, except at a loss; it is equally obvious that defendants can continue in business with the injunction remaining without a loss, save that of its customers, and, therefore, while a *prima facie* cause is made out by the bill, it is well always for the Court to look to the resultant injury or damage that follows by reason of the injunction, or its dissolution. So it will thus be seen that to permit said injunction to stand until this cause can be heard upon its merits, there can be no loss to the defendants (except possibly some of its customers), and the legitimate property rights of the complainants will be preserved.

Realizing the many ramifications that will necessarily follow a charge of this kind, the Court is fully cognizant of the many circumstances and facts that must be proven in order to establish such allegations, and, of course, the wide field in which the defendants are operating necessitates considerable time in bringing the cause to a trial on its merits. However, the Court must at all times endeavor to look to and care for the respective rights of its litigants brought before it for an adjudication of their respective differences.

There is no necessity for a full citation of authorities upon which this opinion is predicated, but in order that respective counsel may have access thereto, you are here referred to the following:

Standard Oil Co. v. *Missouri*, 224 U. S., 751; *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S., 86; *Standard Oil Co. et al.* v. *State ex rel.*, 107 Miss., 227; *Standard Oil Co.* v. *United States*, 221 U. S., 1; *Standard Oil Co.* v. *States*, 117 Tenn., 618; *United States* v. *American Tobacco Co.*, 221 U. S., 106; *Nash.* v. *U. S.*, 259 U. S., 373; *American Column & Lumber Co.* v. *United States*, 257 U. S., 377; *Live Poultry Dealers Ass'n.* v. *United States*, 4 Fed. Reps., 84-G; *Federal Trade Commission* v. *Beechnut Packing Co.*, 257 U. S., 441; *Dry Myers Medicine Co.* v. *John D. Parks Bros. Co.*, 220 U. S., 373; *State ex rel.* v. *Standard Oil Co.*, 15 L. R. A., 145; *Richardson* v. *Bughl*, 77 Mich., 632; *Darcey* v. *Allein*, 11 Coke, 84-B; *G. N. C. Marion C.* v. *Ceafield Co.*, 190 Fed.

Rep., 927; 32 C. J., 490-91; Fletcher on Corporations, 4309; *Railway* v. *Alms*, 136 S. W., 1164; *Railway* v. *Hale*, 153 S. W., 411; *Dillard* v. *Richardson*, 141 Tenn., 290; *Madison* v. *Stahlman*, 130 Tenn., 403; *Westinghouse* v. *Allys-Chalmers Co.*, 176 Fed. Rep., 362; *Railway* v. *Association*, 247 U. S., 490.

It results that the motion of the respective defendants must be overruled, and in accordance with this opinion a decree has been this day drawn, and ordered filed at Murfreesboro, Tennessee.

(Signed) THOS. B. LYTLE, *Chancellor.*

A true copy attest:
M. B. FARRISS,
Clerk and Master, Maury County, Tennessee.

ORDER SUBSTITUTING TEXAS CO., A DELAWARE CORPORATION, FOR TEXAS CO., A TEXAS CORPORATION.

(Entered September 2, 1927. Gore, Judge.)

In this cause now pending in the United States District Court for the Middle District of Tennessee, Nashville Division, the following has been made to appear to the Court by stipulation of counsel for the respective parties, evidenced by their signatures hereto:

1. The Texas Company, the Plaintiff in this cause, a corporation organized and existing under the laws of the State of Texas, has, since this suit was instituted, sold all its properties, including its properties in the State of Tennessee, to The Texas Company, a corporation organized and existing under the laws of the State of Delaware; and this latter company, The Texas Company of Delaware, has taken over in the State of Tennessee, all of the properties and business formerly owned and conducted by The Texas Company, organized under the laws of the State of Delaware, is now en-

gaged in the sale and distribution of gasoline throughout the State of Tennessee in the same manner, at the same places, and for the same purposes as was its predecessor, the Texas Corporation, at the time of the acquisition of the properties and assets of said Texas corporation, by the said The Texas Company, the Delaware corporation.

And The Texas Company, the Delaware corporation, is engaged in the business of selling gasoline in the State of Tennessee, as well as oil, in interstate commerce, and the sale of gasoline and oil in tank lots, and at the present time is engaged in the sale of gasoline in tank wagons from its established stations and depositories throughout the State of Tennessee to retail dealers, in the same manner as its predecessor, the Texas corporation, the Plaintiff in this original suit.

2. The said, The Texas Company, organized and existing under the laws of the State of Delaware, has qualified under the laws of the State of Tennessee, to do business in Tennessee, and has fully complied with the Statutes and provisions of the State of Tennessee in reference to foreign corporations doing business in this State.

3. The said, The Texas Company, the Delaware corporation, has prepared and was ready to file a supplemental bill in this cause, setting forth the matters and facts hereinabove stated, as well as other appropriate allegations, and asking to come into this cause as a party plaintiff, and be substituted in the place and stead of The Texas Company, the Texas corporation, the present Plaintiff.

4. And the parties in interest being advised that the same results could be obtained by an order or decree entered in this cause by consent and agreement of all parties interested, substituting the said, The Texas Company, the Delaware corporation, as party plaintiff instead of The Texas Company, the Texas corporation, the original plaintiff; and that the cause thereafter proceed as though said supplemental bill had been allowed to be filed under proper allegations made therein.

It is accordingly agreed by the parties, and ordered by the Court that the said Texas Company, the Delaware corporation, be and is, allowed to become a party plaintiff herein, and substituted in the place and stead of the original Plaintiff, the Texas corporation; and that the cause stand and proceed in all respects the same as though The Texas Company, the Delaware corporation had, by supplemental bill and proper proceedings pursuant thereto, been made the party plaintiff, and substituted in the place and stead of the original Plaintiff, the Texas corporation.

5. It is therefore ordered, adjudged and decreed by the

Court that The Texas Company, the Delaware corporation, be and is hereby substituted as the party plaintiff in this cause instead of the original plaintiff, the Texas corporation. That the said substituted Plaintiff, be, and is hereby entitled to the benefit of all proceedings heretofore had in the cause, including the right to the preliminary injunction, ordered to be issued under Decree or Order of the Honorable Charles B. Moorman, Circuit Judge, Xenephon Hicks and John J. Gore, District Judges, sitting pursuant to Section 266 of the Judicial Code.

6. It appearing to the Court that the injunction has not been actually issued, the Order of Decree therefor by the said three Judges not having been actually entered, it is ordered and decreed by this court that the said injunction shall, when issued, be in favor of The Texas Company, the Delaware corporation, and substituted Plaintiff, and the bond required for injunction shall be executed by and in the name of this substituted Plaintiff, The Texas Company, the Delaware corporation.

7. This Decree or Order is agreed to by the respective parties, and ordered by the Court, and approved for entry to the end that the expense and delay incident to a proceeding by way of a supplemental bill might be saved, and the cause shall stand and proceed as though the matters herein embraced had been made by supplemental bill properly filed and regular proceedings had thereunder.

This 29th day of August, 1927.

THE TEXAS COMPANY,
BY JNO. B. KEEBLE, *Attorney.*

Approved for entry.

GORE, *Judge.*

FRANK S. HALL;
Commissioner of Finance and Taxation of the State of Tennessee;

L. D. SMITH,
Attorney-General of the State of Tennessee;

R. M. ATKINSON,
District Attorney-General for the State of Tennessee for the Tenth Judicial Circuit, embracing Davidson County;

BY L. D. SMITH, *Attorney-General.*

PER CURIAM OPINION.

(Filed August 20, 1927)

Before Moorman, Circuit Judge, and Hicks and Gore, District Judges.

PER CURIAM: These causes are submitted on motions for temporary injunctions enjoining defendants, who are officers of the State of Tennessee, from enforcing an act of the Tennessee Legislature of April 8, 1927, which undertakes to regulate the prices at which gasoline shall be sold in the state. The jurisdiction of the court as such rests upon constitutional grounds as well as diversity of citizenship with the requisite amount involved. The equity jurisdiction of the court is involved on the ground of threatened and oppressive prosecutions.

The act establishes a bureau under the Department of Finance and Taxation to be known as the Division of Motors and Motor Fuels in charge of a superintendent, who is charged with the duty of collecting data pertaining to the cost and sale prices of dealers in gasoline. It is made unlawful for any person to engage in selling gasoline in intrastate commerce in Tennessee without first obtaining a permit from the superintendent of the Division of Motors and Motor Fuels. A dealer is required to make application to the superintendent for a permit and to state whether he proposes to sell at wholesale or retail or both, the number and location of his places of business, the prices at which he is selling gasoline at such locations, the cost price of the gasoline to him, including the refinery cost, transportation cost, taxes, inspection fees and all other costs incident to its sale and distribution, the prices at which he proposes to sell, and such other information as the superintendent may require. It is the duty of the superintendent to issue the permit if in his opinion it is "in the interest of the public" and the prices at which the applicant proposes to sell do not exceed a reasonable profit, considering the proper differential between the wholesale and retail prices. If, however, the superintendent does not approve of the prices which the applicant proposes to charge, it is his duty to fix a price at which the gasoline "may be sold," and if the latter is dissatisfied, he may have the action of the superintendent reviewed by the Commissioner of Finance and Taxation, and if still dissatisfied, the Commissioner's action may be reviewed in the courts.

It is further provided in the act that it shall be unlawful for any person to engage in selling gasoline in Tennessee, either at wholesale or retail, or to change the prices at which he is selling gasoline, without the consent of the

superintendent. It is also made unlawful to grant any rebate to any customer or purchaser of gasoline, or to grant any concession or gratuity, directly or indirectly, to any purchaser or customer, or to discriminate against or in favor of any customer or purchaser "by selling at a different price to said purchasers in different localities in Tennessee or to different purchasers in the same locality, except in so far as the freight rates affect the price." The Attorney General, with his assistants, is made the law officer of the Division of Motors and Motor Fuels and is charged with the duty of representing the public before the superintendent in respect to the price or prices the dealer may charge, and also of enforcing the provisions of the act.

The act is assailed as violating the Fourteenth Amendment of the Constitution of the United States in that it deprives the dealer of his property without due process of law, and denies to him the equal protection of the laws. It is also attacked on the ground that it violates Section 8, Article 1, of the Constitution of Tennessee, which contains guaranties similar to those of the Fourteenth Amendment, and because it undertakes to confer upon the Chancery Courts of the state administrative or legislative powers in violation of Section 1 and 2 of Article 2 of the Constitution of the state, which provide that no person or persons belonging to one of the three separate and distinct departments into which the government of the state is divided shall exercise any power properly belonging to either of the others.

Preliminarily to the constitutional questions argued it is contended for the state that complainants are not in position to invoke relief from a court of equity because no property rights belonging to them have been affected by the act or can be affected by it until a price has been fixed at which they must sell gasoline. It suffices, we think, to say in response to this that the act makes it unlawful to sell gasoline without having obtained a permit so to do from the superintendent of the Division of Motors and Motor Fuels, that it became effective from and after its passage, and that every sale of gasoline thereafter, made by a dealer is under the terms of the act unlawful and is punishable under Section 6437 Shannon's Code as a misdemeanor. It is alleged in the bills as amended that the defendants are preparing to and will prosecute complainants for each violation of the act, and indeed it is the duty of the Attorney General and his assistants, as well as the other prosecuting officers of the state, to prosecute any infractions of the law. Clearly, therefore, a continuation of the business of complainants would result in oppressive prosecutions which a court of equity may enjoin if the act shall be determined in-

valid. *Terrance* v. *Thompson*, 263 U. S., 197, and authorities there cited.

The act without doubt confers upon the superintendent of the Division of Motors and Motor Fuels the right and power to fix the prices at which gasoline shall be sold in the state. In this respect it has the effect of depriving both the seller and purchaser of the freedom of contract, a right which has uniformly been held to be within the protection of the Fourteenth Amendment, subject, of course, to the legitimate exercise of the police power of the state. *Allgeyer* v. *Louisiana*, 165 U. S., 578; *Lochner* v. *New York*, 198 U. S., 45; *Adair* v. *United States*, 208 U. S., 161; *Atkins* v. *Children's Hospital*, 261 U. S., 525. The state contends that the act was passed in the proper exercise of its police power, and that in addition to the presumptions in favor of validity, the Court should consider the judicial history of the gasoline industry in Tennessee which the General Assembly had before it and upon which it is presumed to have decided that the legislation was a proper police regulation. After reciting preambulatorily that gasoline is now in general use in the state as a motor fuel for both public and private transportation, is necessary to the carrying on the commerce of the state, and that the business of selling and marketing gasoline has become demoralized because of attempts to destroy competition and because of unfair and improper practices in the trade, the act declares that "the sale and marketing of gasoline in this state is impressed with public use," and then proceeds, as we have indicated, to establish a bureau which is authorized to fix the wholesale and retail prices at which it may be sold.

We do not find it necessary to determine the constitutionality of the act in respect to the several details that are argued, or in connection with the attempt, as claimed by complainants, to vest in the courts legislative or administrative powers, but proceed to consider its effect as a price-fixing measure under the Fourteenth Amendment. Most of the cases cited in argument and briefs were discussed in the recent opinion of the Supreme Court in *Tyson* v. *Banton*, decided February 28, 1927, where it was held that a statute of New York regulating the prices at which theater brokers who purchased tickets from theater owners might resell the tickets deprived the broker of his freedom of contract guaranteed by the Fourteenth Amendment. There, as here, the act specifically declared that the subject matter of the legislation was "affected with a public interest," and the Supreme Court, reversing the judgment of the lower court, held that it was not so affected but was a purely private interest, and while undoubtedly evils in connection

with theater ticket prices, as set out in the statute, existed, they could be corrected only by constitutional means and not by the unconstitutional method of regulating or fixing prices. See also *Wolf Co.* v. *Industrial Court*, 262 U. S., 522, and *Creamery Co.* v. *Minnesota*, — U. S., —. In the last-mentioned case the Court, following the Tyson case, held invalid, as impairing the freedom of contract, a state statute making it unlawful to purchase cream at higher prices in one locality than in others, after allowing for differences in cost of transportation.

It is undoubtedly true, as the state contends, that with changing social and economic conditions there have been extensions of detailed public regulation. None of them, in our opinion, approaches the limits of this legislation. *Munn* v. *Illinois*, 94 U. S., 113, was perhaps the first. It involved grain elevators standing at "the gateway of Commerce," taking toll from all who passed, as in a different degree did *Budd* v. *New York*, 143 U. S., 517, and *Brass* v. *North Dakota*, 153 U. S., 391, and they were held to be subject to public regulation because they had come to hold "such a peculiar relation to the public" that government regulation was "superimposed upon them." In the later case of *German Alliance Insurance Co.* v. *Kansas*, 233 U. S., 389, government regulation of insurance companies was sustained because of "considerations peculiar to the insurance business." It is to be remembered, however, that there are expressions in that opinion which the court said in the Tyson case might be regarded as a warning "to be cautious about invoking the decision as a precedent for the determination of cases involving other kinds of business." Furthermore, the business involved in that case and others relied upon by the state were distinguished in their relation to the public interest in *Atkins* v. *Children's Hospital*, 261 U. S., 525, and in the Wolf case, from the private enterprise of dealing in commodities—in fact, it was held in the Tyson case that, in the absence of a controlling emergency, there is no legislative power to fix the price of such commodities as provisions and clothing. It is, of course, true that in *Wilson* v. *New*, 243 U. S., 332, *Block* v. *Hirsh*, 256 U. S., 135, and *Holding Company* v. *Feldman*, 256 U. S., 170, statutes which in effect regulated prices and restricted the freedom of contract were upheld; but they, as the Supreme Court clearly pointed out in the Tyson case, were emergency measures. This act does not purport and, indeed, could not be said to be such a measure; it is nothing but an attempt to fix the price at which one may sell or buy gasoline, a commodity, to be sure, in general use, and concededly necessary to the convenience, comfort and well-being of the

citizens of the state, but not more necessary than many other commodities which are bought and sold within the state.

It is said that the statute may be upheld as a valid method of suppressing monopolies, which is declared to be one of its aims. We cannot concede that a purpose, however beneficient, may be affected by unconstitutional means. There is a statute of the State of Tennessee aimed at the suppression of monopolies, and although it may be, as suggested in argument, that the judicial history of the statute shows its ineffectiveness to correct those evils in the gasoline business, it is nevertheless true, as said in the Tyson case, that "evils are to be suppressed or prevented by legislation which comports with the Constitution and not by such as strikes down those essential rights of property protected by that instrument against undue governmental interference."

While a statute should be considered in the light of the facts in the legislative mind when it was enacted and is entitled to a presumption favoring validity, it is not the less the function of the courts to hold it invalid if it be clearly opposed to the Constitution. *Atkins* v. *General Hospital*, 261 U. S., 525. Saving the alleged monopoly in the gasoline industry, which if it existed would not, as we have seen, justify the legislation, there is no fact or circumstance which could have actuated the Legislature in enacting this statute that might not be found to support an enactment fixing the sale prices of other commodities, quite as indispensable to the comfort and welfare of the people of the state. Such other commodities, as well as gasoline, are assuredly affected in a sense with a public interest; they are, furthermore, exposed in their distribution and sale to the evils which are declared by the act in question to exist in the gasoline business. They are all related quite as intimately with the commerce of the state and likewise with the welfare and comfort of the citizens of the state as gasoline. This statute makes no distinction between those who are seeking to suppress and those who are fostering competition, the wrongdoer and the innocent; it "spreads an all-inclusive net," as said in the Tyson case. If it is upheld, there is no reasonable limit to the power of the state to regulate or fix the prices of such other commodities, and determine what one, whether wrongdoer or not, should receive for what he has to sell and what he should pay for what he must buy—precisely what the Supreme Court has said cannot be done. In our opinion, the legislation violates the Fourteenth Amendment.

It is further argued for the State that even though it be held that the act is invalid in so far as it attempts to con-

fer upon the State the power to fix the prices at which gasoline shall be bought and sold, the purposes of the act are so varied and separable that it may and should be upheld in other particulars. If it may be said that with the price-fixing features of the act stricken therefrom the legislation would have been enacted, the entire act should not be declared invalid. The act itself provides "that if any section or provision of this act shall be held to be invalid, this shall not affect the validity of other sections or provisions thereof." There are thirteen sections in the act, the first of which is in the form of a preamble referred to, the next nine deal in the main with the subject of regulating and fixing the prices of gasoline, Section 11 defines the term gasoline, Section 12 provides, as we have just stated, that if any section of the act shall be held invalid it shall not affect the other sections or provisions thereof, and Section 13 provides only for the effective date of the act. Notwithstanding the legislative declaration, it seems clear to us that the main purpose of the act is to regulate and fix the prices at which gasoline shall be bought and sold, and it is inconceivable that except for that purpose the legislation would have been enacted.

An injunction may issue in each case temporarily enjoining and restraining defendants and each of them from instituting any prosecution under the act against the complainant therein, upon the giving of a bond, conditioned according to law in the sum of $10,000.00.

ORDER GRANTING INTERLOCUTORY INJUNCTION.

(Entered November 21, 1927. Moorman, Hicks and Gore, Judges.)

This cause came on to be regularly heard on April 30, 1927, before Honorable Charles H. Moorman, Circuit Judge, and Honorable John J. Gore, and Honorable Xen Hicks,

District Judges, upon the plaintiff's application for such interlocutory injunction, to enjoin and restrain the defendants from proceeding or in any wise attempting to enforce the Act of the General Assembly of Tennessee passed April 8, 1927, known as Chapter 22, Public Acts of Tennessee for 1927, which was argued by counsel.

The Court being of the opinion that the price fixing features of the Act aforesaid are unconstitutional, and that the other features are so interwoven with the unconstitutional parts of the Act that is could not be said that those parts which would otherwise be valid would have been enacted had not the Act contained the unconstitutional provisions, and that therefore the enforcement of said statute had the effect to take from the plaintiff its liberty or contract in violation of Article 14 of the amendments to the Constitution of the United States, and denies to plaintiff the equal protection of the law; the reasons for this opinion being more fully set forth in the written opinion on file in this cause;

And it appearing to the Court that the Act makes it unlawful to sell gasoline without having a permit to do so from the Superintendent of the Division of Motor and Motor Fuels; that it became effective from and after its passage and that every sale of gasoline thereafter made by a dealer, under the terms of the Act, is unlawful and is punishable under Sec. 5437 of Shannon's Code as a misdemeanor; that it is alleged in the bill that the defendants are preparing to and will prosecute complainant for each violation of the Act, and that it is the duty of the Attorney General and his assistants, as well as other prosecuting officers of the State, to prosecute any infraction of the law, wherefore a continuation of the business of the plaintiff would result in oppressive prosecution which a court of equity may enjoin if the Act shall be determined invalid;

And it further appearing to the Court, by an agreed decree entered in the cause between plaintiff and defendants, that The Texas Company, a corporation organized and existing under the laws of the State of Delaware, since the filing of the original bill in this cause, has succeeded to all the properties and business of The Texas Company, and particularly the properties and business in the State of Tennessee, and that said Company has qualified to do business in the State of Tennessee and is now engaged in such business, and that it is stipulated and agreed that the said Delaware Corporation, The Texas Company, shall be substituted in this suit as party plaintiff in the place and stead of The Texas Corporation, as if it had been named as plaintiff in the original bill;

It is therefore now ordered, adjudged and decreed, that

upon the plaintiff's execution and filing herein an injunction bond in the penal sum of Ten Thousand ($10,000) Dollars, with good and sufficient surety, conditioned as required by law, the defendant, Frank S. Hall, Commissioner of Finance and Taxation of the State of Tennessee, L. D. Smith, Attorney General of the State of Tennessee, and R. M. Atkinson, District Attorney General of said State for the County of Davidson, in their respective official capacities, and each of them, their servants, agents, employes, successors and subordinates in office and attorneys, and those in active concert or participating with them, and all other persons acting by, through and under them, be and they are hereby enjoined from proceeding to enforce against the plaintiff, The Texas Company, a corporation organized under the laws of the State of Delaware, the Act of the State of Tennessee above mentioned, and from in any way interfering with said plaintiff in the conduct of its said business, upon the ground or for the reasons that said plaintiff has not complied with said act, and from instituting any suit or proceeding against said plaintiff for the enforcement of the penalties and/or forfeitures provided in said act, or for the enforcement against plaintiff of the penalties and/or forfeitures provided by any other law of the State of Tennessee for violation of said act, and that said injunction continue and remain in force until the further orders of this Court in the premises.

To which holding and decree of the Court, the defendant excepts.

Approved:

JNO. B. KEEBLE, *Counsel for Plaintiff.*

L. D. SMITH, *Counsel for Defendants.*

Enter:

CHAS. H. MOORMAN,
GORE,
XEN HICKS,
Judges.

INJUNCTION.

(Issued November 22, 1927.)

The President of the United States of America—To the Marshal of the Middle District of Tennessee, Greeting:

Whereas, in the above entitled cause an application for the issuance of a temporary writ of injunction has been filed and set down for hearing before Honorable Chas. H. Moorman, Circuit Judge, and Honorable John J. Gore and Honorable Xen Hicks, District Judges, on the 30th day of April, 1927. Notice of such application was given to the defendants, Frank S. Hall, Commissioner of Finance and Taxation of the State of Tennessee, L. D. Smith, Attorney General of the State of Tennessee, and R. M. Atkinson, District Attorney General of the said State for the County of Davidson, and the parties, plaintiff and defendants appearing in open court by their solicitors and being heard upon said application and it appearing that cause exists for the granting of writ of temporary injunction pending the final hearing of this cause as prayed for.

It is therefore ordered, adjudged and decreed that said defendants, Frank S. Hall, Commissioner of Finance and Taxation of the State of Tennessee, L. D. Smith, Attorney General of the State of Tennessee, and R. M. Atkinson, District Attorney General of said State for the County of Davidson, in their respective *official* capacities, and each of them, their servants, agents, employes, successors and subordinates in office and attorneys, and those in active concert or participating with them, and all other persons acting by, through and under them, be and they are hereby enjoined from proceeding to enforce against the plaintiff, The Texas Company, a corporation organized under the laws of the State of Delaware, the Act of the State of Tennessee hereafter mentioned, and from in any way interfering with said plaintiff in the conduct of its said business, upon the ground or for the reasons that said plaintiff has not complied with the act of the General Assembly of Tennessee passed April 8, 1927, known as Chapter 22, Public Acts of Tennessee for 1927; and from instituting any suit or proceeding against said plaintiff for the enforcement of the penalties and/or forfeitures provided in said act, or for the enforcement against plaintiff of the penalties and/or forfeitures provided by any other law of the State of Tennessee for violation of said act, and that said injunction continue and remain in force until the further orders of this Court in the premises.

And due return make of how you have executed this writ. Witness the Honorable John J. Gore, Judge of the said Dis-

trict Court, and the seal thereof, at Nashville, this 22nd day of November, A. D. 1927, and in the 152nd year of the Independence of the United States of America.

H. M. DOAK, *Clerk.*

SEAL By S. B. WATSON, *Deputy Clerk.*

Marshal's Return:

Received this writ at Nashville, Tennessee, in Davidson County, November 22, 1927, and executed as herein commanded by leaving copy with R. M. Atkinson, Attorney General, and T. P. Henderson, Special Counsel to the Attorney General for the State of Tennessee, copy with Albert Williams, Commissioner of Finance and Taxation for the State of Tennessee.

This November 28, 1927.

R. Q. LILLARD, *U. S. Marshal.*

By W. B. GOODWIN, *Deputy Marshal.*

ORDER SUBSTITUTING ALBERT S. WILLIAMS, SUCCESSOR OF FRANK S. HALL.

(Entered December 8, 1927. Gore, Judge.)

In this cause came the parties by their respective attorneys and admitted that the defendant, F. S. Hall, sued herein as Commissioner of Finance and Taxation of the State of Tennessee, resigned said office and is no longer connected therewith, and that Albert S. Williams has been duly appointed to said office as successor of said Hall, by the Governor of Tennessee, pursuant to the laws of said State, and is now the Commissioner of Finance and Taxation of the State of Tennessee, and, therefore, it is agreed that complainant's bill be dismissed as to the said F. S. Hall and Albert S. Williams, Commissioner of Finance and Taxation of the State of Tennessee, be substituted as one of the defendants in this cause in the room and stead of the said

F. S. Hall, with all the right to appeal, and such other rights as the defendant, F. S. Hall, had, and subject to the injunctive order of this court and the interlocutory decree entered herein on the 21st day of November, 1927, to the same extent as was the said F. S. Hall, and with full right to appeal therefrom under the practice of this Court.

Enter this 8th day of December, 1927. Gore, Judge.

JOHN B. KEEBLE, *Attorney General.*
L. D. SMITH, *Attorney General.*
J. J. LYNCH.
H. N. LEECH.
CHARLES T. CATES, JR.
Attorneys for Defendants.

PETITION FOR APPEAL.

(Filed December 8, 1927.)

To the Honorable John Gore, District Judge:

The petition of Defendant Albert S. Williams, Commissioner of Finance of the State of Tennessee, L. D. Smith, Attorney General of Tennessee, and R. M. Atkinson, one of the District Attorneys General of Tennessee, filed in your Honor's Court in the above entitled cause.

Your petitioners, Albert S. Williams, Commissioner of Finance of the State of Tennessee, L. D. Smith, Attorney General, and R. M. Atkinson, one of the District Attorneys General of Tennessee, defendants in the above named and entitled cause, feeling aggrieved by the interlocutory order and decree rendered and entered therein on the 21st day of November, 1927, do hereby appeal from said interlocutory order and decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith and they pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said interlocutory order or decree was based, duly authenticated, be sent to the Supreme Court of the United States

sitting at Washington under the rules of such Court in such cases made and provided.

And your petitioners hereby tendering proper security for said appeal, further pray that the proper order relating to the security to be required of them, be made, as well as an order allowing said appeal.

ALBERT S. WILLIAMS,
Commissioner of Finance.
L. D. SMITH,
Attorney General.
R. M. ATKINSON,
District Attorney General.
(Signed) By L. D. SMITH,
Attorney General of Tennessee.

L. D. SMITH,
Attorney General of Tennessee.
J. J. LYNCH,
H. N. LEECH,
CHARLES T. CATES, JR.
Attorneys for Defendant.

ASSIGNMENTS OF ERRORS.

(Filed December 8, 1927.)

Now come the defendants in the above entitled cause, to-wit, Albert Williams, Commissioner of Finance and Taxation, of the State of Tennessee, L. D. Smith, Attorney General of the State of Tennessee, and R. M. Atkinson, District Attorney General for the State of Tennessee and for the Tenth Judicial Circuit of Davidson County, Tennessee, and jointly and severally submit and file the following assignment of errors upon which they, and each of them, will rely upon the prosecution of their appeal in the above entitled cause from the decree made by this Honorable Court on the

21st day of November, 1927, granting an interlocutory injunction and restraining order in this case:

I.

That the Court was in error in holding the Act of the General Assembly of Tennessee, challenged and complained of in this cause, to be unconstitutional because said act is a valid and proper exercise of the police power of the State in its declared purpose of preventing monopoly and extortion and protecting intra-state commerce and transportation.

II.

That the Act of the General Assembly of Tennessee complained of and held by the Court to be in violation of the 14th amendment to the Federal Constitution is a proper and valid regulation of the gasoline industry affected with the public interest and which industry is a proper subject of state regulation.

III.

That it is within the just and reserved powers of the State of Tennessee to regulate and fix reasonable prices for the sale and distribution within the state of gasoline—a commodity the sale and distribution of which affects, directly and indirectly, all the people of Tennessee.

IV.

The opinion and holding of the Court to the effect that the entire act was unconstitutional was erroneous even if the price fixing provisions of the act were beyond the power of the state.

It was and is the obvious purpose of the General Assembly to exercise all the power the state had or has in regulating the gasoline industry and remedy the evils recited in the act, and even if that part of the act relating to fixing prices should be held invalid the other provisions of the act separate and distinct therefrom should be sustained and enforced. The Court was therefore in error in failing to sustain all the provisions of the act except the price-fixing provision, even assuming that to be invalid.

V.

The Court was in error in issuing the injunction because the plaintiff had a plain, adequate and complete remedy at law.

Wherefore the appellants pray that the said decree be

reversed and that said District Court for the Middle District of Tennessee be ordered to enter a decree reversing the decision of the lower court in said cause.

L. D. SMITH,
Attorney General.
J. J. LYNCH,
H. N. LEECH,
CHARLES T. CATES, JR.,
Attorneys for Appellants.

ORDER ALLOWING APPEAL.

(Entered December 8, 1927. Gore, Judge.)

On motion of L. D. Smith, Esq., Attorney General of Tennessee, and of Charles T. Cates, Jr., counsel for defendants in the above entitled cause, it is hereby ordered that an appeal by said defendant to the Supreme Court of the United States from the interlocutory order or decree heretofore filed and entered herein, on the 21st day of November, 1927, be and the same is hereby allowed and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of $500.00.

And thereupon said bond with sufficient security was duly approved by the Court.

This 8th day of December, 1927.

GORE, *Judge.*

BOND FOR APPEAL.

(Filed December 8, 1927.)

Know all men by these presents, that we, Albert S. Williams, principal by substitution in the place of Frank S. Hall, also L. D. Smith and R. M. Atkinson, as principals, and Charles T. Cates, Jr., and Roy H. Beeler, as sureties, are held and firmly bound unto The Texas Company in the penal sum of Five Hundred ($500.00) Dollars, conditioned as follows:

Whereas, in the above entitled cause on the Equity Docket of the United States District Court for the Middle District of Tennessee at Nashville, judgment was rendered against the defendants, Frank S. Hall, as Commissioner of Finance and Taxation of the State of Tennessee, L. D. Smith, as Attorney General of said state, and R. M. Atkinson as District Attorney General of Davidson County, Tennessee, and in favor of the plaintiff, The Texas Company, to the effect that the Act of the Legislature of Tennessee attacked in said case was unconstitutional and void; and

Whereas, the defendants in said case have obtained an appeal from the judgment of said Court to the Supreme Court of the United States to review said judgment, and citation has been directed to The Texas Company citing it to be and appear before the Supreme Court of the United States to be holden at Washington, D. C., to show cause why said judgment should not be corrected and reversed.

Now, therefore, the condition of the above obligation is such that if the said appellants shall prosecute their appeal with effect and make their appeal good, or otherwise abide by and perform the final judgment of the Court in the premises then the above obligation shall be void; otherwise the same shall remain in full force and virtue.

ALBERT S. WILLIAMS,
L. D. SMITH,
R. M. ATKINSON,
Principals.
All by ROY H. BEELER,
Assistant Attorney General.

CHARLES T. CATES, by ROY H. BEELER,
ROY H. BEELER,
Sureties

Approved this 8th day of December, 1927.

GORE, *Judge.*

CITATION.

(Filed December 8, 1927.)

To The Texas Company—Greeting:

You are hereby cited and admonished to be and appear at the next session of the Supreme Court of the United States to be holden in the city of Washington, D. C., pursuant to petition for appeal filed in the clerk's office of the District Court of the United States for the Nashville Division of the Middle District of Tennessee, and pursuant to order granting such appeal passed by said District Court of the United States, wherein The Texas Company is plaintiff and F. S. Hall and others are defendants, to show cause, if any there be, why the judgment rendered against the said defendants and mentioned in said petition for appeal should not be corrected and reversed, and why speedy justice should not be done to the plaintiffs in error in that behalf.

Witness the Honorable John J. Gore, United States District Judge for the Middle District of Tennessee, within the Sixth Circuit, this the 8th day of December, 1927, and of the Independence of the United States of America the 152nd.

JOHN J. GORE,
United States District Judge.

We hereby accept service of this citation on behalf of the defendant in error, this 9th day of December, 1927.

JOHN B. KEEBLE,
Attorney for Defendant in Error.

ORDER EXTENDING TIME TO PERFECT APPEAL

(Entered January 5, 1928—HICKS, *Judge*)

In this cause for satisfactory reasons to the court appearing, and by consent of the parties hereto, it is ordered that

the time within which the appellants may file their record on appeal in the Supreme Court of the United States be, and the same is, hereby extended for a period of thirty days from January 7, 1928.

Approved for entry:

XEN HICKS,
United States District Judge.

O.K.
JOHN B. KEEBLE, *Attorney.*
CHARLES T. CATES, JR., *Attorney.*

PRAECIPE.

(Filed December 8, 1927.)

To the Clerk:

You are hereby requested to make transcript of record in this cause, to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in said cause, and to include in said transcript of the record the following, and no other papers or exhibits, to-wit:

1. Caption of the Court.
2. Original Bill with its Exhibits, including affidavits.
3. Retraining order.
4. Motion to dismiss original bill and answer to original bill with all exhibits.
5. Order substituting Texas Co., a Delaware Corp., for Texas Co., a Texas Corporation.
6. *Per curiam* opinion.
7. Order on *per curiam* opinion.
8. Injunction.
9. Order substituting Albert S. Williams successor of Frank S. Hall.
10. Petition for appeal.
11. Assignments of Error.
12. Order allowing appeal.
13. Appeal bond.

14. Citation.
15. Praecipe.
16. Clerk's certificate.

L. D. SMITH,
Attorney General of Tennessee.
J. J. LYNCH,
H. N. LEECH,
CHARLES T. CATES,
Attorneys for Appellants.

Service of the foregoing praecipe accepted.
This 12th day of December, 1927.

JOHN B. KEEBLE,
Attorney for Texas Co.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
MIDDLE DISTRICT OF TENNESSEE.

I, H. M. Doak, Clerk of the District Court of the United States in and for the Middle District of Tennessee, do hereby certify that the foregoing pages contain a true, correct and complete record as called for by the attorneys for the appellant herein in the matter set out in the caption hereto, as the same appears from the records and files in this office.

Witness my hand as clerk and seal of said Court at Nashville, Tennessee, on this the .... day of ....., 1928, and of the Independence of the United States of America the one hundred and fifty-second year.

H. M. DOAK, *Clerk.*

(SEAL)

By .....*D. C.*

SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE STATEMENT OF POINTS—
February 23, 1928

On consideration of the motion of Mr. Charles T. Cates, Jr., for an extension of time within which to file a statement of points to be relied upon and designation of parts of the record to be printed,

It is now here ordered by this Court that the said motion be, and the same is hereby, granted, and the time within which to file a statement of points to be relied upon and designation of parts of the record to be printed is extended to and including March 10th, per stipulation of counsel.

IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed March 10, 1928

Come now appellants, complying with Paragraph 9 of Rule 11 of this Court, and submit a statement of the points upon which they intend to rely and also submit and designate the parts of the record by them deemed necessary for the consideration thereof.

Statement of Points to be Relied on

It is insisted by Appellants that the District Court erred in holding invalid the Act of the General Assembly of Tennessee, exhibited with and made a part of the Original Bill in the above entitled cause, being chapter 22 of the Published Acts of the General Assembly of Tennessee for the year 1927, for the reasons following, to-wit:

1. Said Act is a valid, proper and constitutional exercise of the police powers of the State of Tennessee.

2. Said Act is a proper, valid and constitutional regulation of the intrastate gasoline industry, affecting the public interest and use, and that said industry is a proper subject of State regulation.

3. That the gasoline industry is of such importance and so vitally affects the commerce, prosperity and comfort and well-being of the people of Tennessee as to be affected with a public use and has been so managed and operated in the State of Tennessee, as shown by the answer and exhibits thereto, as well as the judicial history of the State and country, that the preservation of the public interest, as well as the commerce of the State, requires the regulation of the said industry and warrants the exercise of the police power of the said State in fixing the price of gasoline in the manner provided in said Act.

4. That, even if the price fixing provisions of said Act should be held to be invalid, nevertheless other separable and distinct provisions of said Act should be sustained and enforced, particularly the provisions relating (*a*) to the publication of prices by gasoline dealers and filing same with the Department of Finance and Taxation; (*b*) the issuance of permits to gasoline dealers; (*c*) prohibiting rebates; (*d*) prohibiting discrimination; (*e*) for the collection and publication of data by the Finance Commission with reference to prices and conditions in the industry; (*f*) providing penalties for violation of the several provisions of the Act thus designated; and (*g*) providing for judicial review of the orders of the Commission.

5. Also for each and all of the reasons set out by and in the five several assignments of error submitted by appellants in the District Court of the United States and set forth on pages 116-118, inclusive, of the printed record from the State Court filed in this Court.

Designation of Record

1. Original Bill and Exhibit thereto, pp. 2-20.
2. Restraining Order, p. 25.
3. Motion to Dismiss Bill and Answer of Appellants, with Exhibits 1, 2, 3, 4 and 5, pp. 26-102.
4. Order substituting The Texas Company, a Delaware Corporation, for The Texas Company, a Texas Corporation, pp. 102-104.
5. Per Curiam Opinion, pp. 105-110.
6. Order granting interlocutory injunction, pp. 110-112.
7. Injunction, pp. 113, 114.

8. Order substituting Albert S. Williams, successor in office to Frank S. Hall, as a party defendant to this cause, pp. 114, 115.
9. Petition for Appeal, pp. 115, 116.
10. Assignment of errors, pp. 116-118.
11. Order allowing Appeal, p. 118.
12. Bond for Appeal, p. 119.
13. Citation, p. 120.
14. Order extending time to perfect appeal and præcipe, pp. 120-122.
15. Clerk's Certificate, p. 122.

NOTE.—The page references are to the printed record as filed in this case by the Clerk of the United States District Court.

This March 3rd, 1928.

L. D. Smith, Attorney General of Tennessee; J. J. Lynch, H. N. Leech, Charles T. Cates, Jr., Attorneys for Appellants.

We, the undersigned, counsel and attorney for Appellee, The Texas Company, hereby acknowledge service and receipt of Statement of Points to be Relied on by Appellants, and their Designation of the Record, as hereinbefore set out.

This March 5, 1928.

Jno. B. Keefer, Attorney for Appellee.

Inasmuch as Appellants have not designated the Affidavits of Amos L. Beatty, R. C. Holmes and W. W. Bruce, found in the printed record on pages 21-24, inclusive, Appellee, The Texas Company, here and now designates said Affidavits in compliance with Rule 11, Paragraph 9 of the Rules of this Court.

This March 5, 1928.

Jno. B. Keefer, Attorney for Appellee.